

**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:

Evraz Inc NA Canada (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, M. Vercillo
Board Member 1, J. Pratt
Board Member 2, J. Massey***

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: 115068009

LOCATION ADDRESS: 7139 OGDEN DALE RD SE

HEARING NUMBER: 63424

ASSESSMENT: \$9,500,000

This complaint was heard on 22nd 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:

- R. Worthington

Appeared on behalf of the Respondent:

- K. Gardiner

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

The Calgary Composite Assessment Review Board (CARB) derives its authority to make this decision under Part 11 of the Act. During the hearing, the Respondent raised the following preliminary or jurisdictional matters:

1. That the Complainant failed to identify his alternative Cost Approach to valuing the subject property on the complaint form and therefore in accordance with the *"Matters Relating Assessment Complaints Regulation" (MRAC) section 9(1); "A composite assessment review board must not hear any matter in support of an issue not specifically identified on the complaint form."* Therefore the Respondent requests that any evidence raised by the Complainant specific to the cost approach not be heard by the CARB.
2. That the Complainant failed to identify the number of buildings present on the subject property, on the complaint form and therefore in accordance with the *"Matters Relating Assessment Complaints Regulation" (MRAC) section 9(1); "A composite assessment review board must not hear any matter in support of an issue not specifically identified on the complaint form."* Therefore the Respondent requests that any evidence raised by the Complainant specific to the number of buildings present on the subject property, not be heard by the CARB.

The Respondent provided the following evidence with respect to these jurisdictional issues:

- The Complainant raised the issue on the complaint form that the alternative method to valuing the subject property should be the Income Approach. The Cost Approach is mentioned in the Complainant's disclosure but not on the complaint form. Therefore, in accordance with *MRAC 9(1)*, evidence related to the cost approach cannot be heard by the CARB.
- The Complainant did not list the number of buildings present on the subject property as one of the issues on the complaint form; therefore, in accordance with *MRAC 9(1)*, evidence related to the number of buildings present on the subject property cannot be heard by the CARB.

The Complainant provided the following evidence with respect to these jurisdictional issues:

- He claimed that the Respondent failed to mention these were issues prior to this hearing and yet had every opportunity to do so. That this was an attempt to "ambush" him and he was not pleased with this tactic. During the disclosure period (42 days) the Respondent was well aware of what the Complainant intended to discuss and present evidence to at the hearing, which included both the cost approach and the number of buildings affecting the subject. In fairness, he felt that the evidence being disputed by the Respondent should be allowed by the CARB.

The CARB finds the following with respect to these jurisdictional issues:

- With respect to the Cost Approach, the CARB noted that the Complainant did not agree with the Respondent's Direct Sales Approach to valuing the subject property. In addressing this, the CARB noted the following were raised on the complaint form related to this issue:
 - The municipality has applied the incorrect valuation methodology when calculating the assessed value of the subject property.
 - The valuation method used for the subject property is fundamentally flawed in both derivation and application.
 - As per Calgary CARB orders 0521/2010-P and 0756/2010-P, the characteristics and physical condition of the subject property support the use of the income approach utilizing typical market factors for rent, vacancy, management, non recoverables and capitalization rates; indicating an assessment market value of \$72 psf.
 - The rent needed to achieve the subject assessed value is unattainable in the market for the subject property.
 - Adjustments to the base rate have been applied inequitably and do not reflect the hindrances on the subject property.
 - The aggregate assessment per square foot applied to the subject property is inequitable with the assessments of other similar and competing properties and should be \$72 psf.
 - The aggregate assessment per square foot applied to the subject property does not reflect market value for assessment purposes when using the direct sales comparison approach and should be \$72 psf.

In the opinion of the CARB, the Complainant offered the Income Approach as an alternative to the Respondent's Direct Sales Approach but failed to mention the Cost Approach as an alternative among the issues.

- With respect to the number of buildings on the subject property, the CARB noted the following issue was raised on the complaint form related to this issue:
 - The property details as assessed to the subject property are incorrect and inconsistent with the characteristics and physical condition as defined by Section 289(2) of the Municipal Government Act.

This, in the opinion of the CARB, indirectly speaks to the number of buildings on the subject property.

Board's Decision:

As in accordance with *MRAC 9(1)*:

- The CARB **will not allow** any evidence related to the Cost Approach to be submitted during the hearing.
- The CARB **will allow** any evidence related to the number of buildings present on the subject property to be submitted during the hearing.

With the above in mind, the CARB proceeded to hear the merits of the complaint, as outlined below.

Property Description and Background:

The subject property is a single tenanted warehouse property located in the "Ogden Shops" industrial area of SE Calgary. The subject property contains what appear to be two buildings

(according to pictures submitted by the Complainant). The first building was built in 1975 and has a net rentable area of approximately 49,144 square feet (SF). The second building was built in 1992 and has a net rentable area of approximately 2,250 SF.

According to the Respondent's Assessment Explanation Supplement (AES), the building is situated on an assessable land area of approximately 14.99 acres and has a building to site coverage ratio of approximately 7.38%. In addition, the AES indicates that the subject contains 11.30 acres of "extra land". The property has a land use designation of "Industrial – Heavy" (I-H). The buildings indicate a 57% and 5% Finish respectively. The property is assessed using the Direct Sales Approach to value and splits the larger building into two separate components. The first component, encompassing an area of 11,295 SF is assessed at a rate of \$147.00 per SF, while the second component encompassing an area of 37,849 SF is assessed at a rate of \$91.65 per SF. The smaller building is assessed at a rate of \$213.03 per SF. The assessment for extra land is \$3,887,219.

Issues:

The CARB considered the complaint form and the jurisdictional issues together with the representations and materials presented by the parties. There were a number of matters or issues raised on the complaint form; however, as of the date of this hearing, the Complainant addressed the following issue:

1. The property details as assessed to the subject property are incorrect and inconsistent with the characteristics and physical condition as defined by Section 289(2) of the Municipal Government Act.

Complainant's Requested Value:

\$7,420,000 on the complaint form revised to \$4,170,000 at this hearing.

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

ISSUE 1:	The property details as assessed to the subject property are incorrect and inconsistent with the characteristics and physical condition as defined by Section 289(2) of the Municipal Government Act.
-----------------	---

The Complainant provided a document entitled "Evidence Submission of Complainant" that was entered as "Exhibit C1" during the hearing. The Complainant along with Exhibit C1 provided the following evidence with respect to this issue:

- Maps and photographs showing that the subject property appears to contain two buildings labeled a "shop" and "additional plant". The Respondent appears to assess 3 different components or buildings and therefore is in error.

The Respondent provided an "Assessment Brief" document that was entered as "Exhibit R1" during the hearing. The Respondent along with Exhibit R1 provided the following evidence with respect to this issue:

- The Respondent confirmed that the assessment is based on three different components on what appears to be only two buildings. However, based on the 2008 and 2009 "Assessment Request for Information" (ARFI) (the 2010 ARFI has not been received) received from the owner, three different warehouse components have been identified on the property by the owner. As a result, the Respondent claims that assessing those

three different components is justified.

The CARB finds the following with respect to this issue:

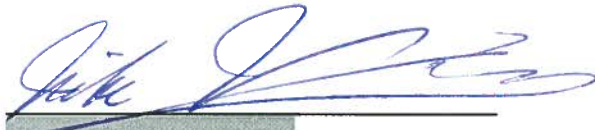
- Although it appears that only two buildings exist on the subject property, the three components assessed by the Respondent have been supported by the owner through their submission of the 2008 and 2009 ARFI. The CARB has no reason to believe that anything significant has changed in the 2010 assessment year.

Board's Decision:

The complaint is denied and the assessment is confirmed at \$9,500,000.

- The Complainant failed to prove that the three building components used by the Respondent in his assessment were in error.
- The owner confirmed the three building components exist on the property through the 2008 and 2009 ARFI. The failure of the owner to provide the 2010 ARFI as requested by the Respondent does not provide the evidence necessary to alter the assessment approach.
- With consideration given to the jurisdictional issues raised by the Respondent and decided by the CARB, no other matters or issues were heard relative to the subject's assessment.

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



Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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.*