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:

Morguard Industrial Properties (1) INC., (as represented by AEC International Inc.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
A. Blake, MEMBER
A. Wong, 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:	**094218708**
LOCATION ADDRESS:	**5060 – 43 ST SE**
HEARING NUMBER:	**63638**
ASSESSMENT:	**$8,370,000**

This complaint was heard on 28th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *Mr. A. Payn - AEC International Inc.*

Appeared on behalf of the Respondent:

- *Mr. J. Lepine - Assessor, City of Calgary*

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

The Respondent advised the Board at the commencement of the Hearing that in his view the Complainant's Rebuttal Package (C-2) contained new information and effectively new issues. He suggested that new leases appeared on page 6 of C-2, and a new Equity Study was presented on pages 10, 11, 13, 14, 15. The Respondent objected to the introduction of this material.

The Board recessed to review the referenced materials and consider the Respondent's argument.

Upon re-convening the hearing the Board advised that it agreed with the Respondent and requested the Complainant to delete this material from his presentation. The Complainant complied.

Property Description:

The subject is a multi-tenant industrial warehouse situated on 4.04 acres of land in Valleyfield industrial area in SE Calgary. The subject is a 70,217 square foot (SF) 1999 structure with 26% finish assessed at $119 per SF. The property is zoned Industrial General (IG), has a total site coverage of 39.95% and is assessed at $8,370,000.

Issues:

1. The subject was incorrectly assessed using the Market Approach to Value and should have been assessed using the Income Approach to Value due to a paucity of market sales in the base year.

2. The assessment is inequitable when compared to comparable properties.

Complainant's Requested Value: $5,475,000 based on Income Approach at $77.97 per SF.

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

Issue #1: "The subject was incorrectly assessed using the Market Approach to Value and should have been assessed using the Income Approach to Value due to a paucity of market sales in the base year."

The Complainant referenced his Brief (document C-1) wherein he identified the location of the subject in Valleyfield industrial area using a map, aerial photo, and exterior photos of the subject building. He argued that there are three approaches to property valuation – i.e Cost, Income, and Market. He indicated that where there is a dearth of market sales, then the Income Approach is most commonly and appropriately used. He argued that such is the case with the current market circumstances for the subject building and other 75,000 SF(plus) warehouse buildings in Calgary.

In support of this theory, the Complainant referenced selected excerpts regarding "Appraisal Theory" said to be from "The Appraisal Institute of Canada" and the "Alberta Assessors' Association". He also referenced on page 32 of C-1, limited excerpts from Calgary Composite Assessment Review Board Decisions CARB 1381/2010-P; CARB 0756/2010-P; and 0758/2010-P. However, it was unclear from his presentation the nature of the appeals, properties and/or issues addressed in these hearings because the complete Decisions were not supplied.

The Complainant therefore argued that even though he had perused, and presented on pages 52 to 54 of C-1, the three years of 154 industrial sales from the City's website, he considered that there were very few "acceptable" comparable property sales in what he defined as the one-year "base year" – ie July 1, 2009 to June 30, 2010. He considered therefore that it was important to use the Income Approach to Value methodology to calculate the assessable value of the subject. The Complainant's market-based presentation to the Board was based predominantly on this principle. In addition he argued that while the City's assessment model is generally reasonably accurate, it becomes unreliable when properties exceed 75,000 SF in floor area.

In support of his position that there were insufficient "acceptable" market sales "in his one-year base year", the Complainant provided a matrix on page 31 of four industrial property sales which had all transacted between May 2009 and April 2010. The Complainant noted in examining the available sales that he had identified only these four "acceptable" properties in the 70,000 SF plus range. However, it was noted that all four were over 100,000 SF, with one being 301,930 SF in size.

The Complainant identified one property at 10905 – 48 ST SE with a total 146,135 SF; a second property at 4949 – 76 AV SE containing three buildings totalling 106,309 SF; a third property at 4100 Westwinds DR NE containing 301,930 SF; and a fourth property at 2340 – 22 ST NE containing 116,566 SF. The Complainant also provided the Alberta DataSearch sheet for his comparable sale at 10905 – 48 ST SE. The Complainant also referenced and identified the "Quality" of the four properties as being either "A-", or "C+"or "C" which he considered a very significant "identifier". He noted that the subject was rated as a B+ building by the City.

The Complainant clarified that in comparing the properties, no adjustments of any kind had been made to any of the four market sales in his matrix. That is, there were no adjustments made for differing site coverages between comparable properties; for differing years of construction of improvements; for differing per cent levels of finish; parcel size; differing sale dates, and so on.

The Complainant argued that predicting the market depends on "homogeneity of characteristics of comparable property sales". As such, he noted, the City's five market sales on page 23 of its Brief R-1 demonstrated that the City had only one useable sale in the Complainant's one-year base year, and its individual characteristics were not "homogeneous" with the subject – an important consideration when comparing properties he suggested. The property is located at 700 – 33 ST NE.

The Complainant identified but did not advocate use of the Cost Approach to Value. On page 17 of C-1 he calculated that by using this approach to assess the subject, an indicated value of $7,573,700 emerged. He did not consider this value to be appropriate to the subject. Instead, he advocated for the Income Approach to Value as the preferred methodology, which he proceeded to calculate.

The Complainant methodically identified the source of each of the inputs to his Income Approach to Value calculation. He articulated on pages 21 and 22 of Brief C-1 that according to Third Party Market Reports for Calgary from CB Richard Ellis and DTZ Barnicke, that "Average <u>Asking</u> Lease Rates", and "Average Gross Rental Rates (<u>Asking</u>)", as well as AEC "lease research", appeared to indicate that an appropriate "average rent" of $5.29 per SF and an "average net effective rent" (after certain inducements) indicated $4.86 per SF was appropriate.

The Complainant thereafter cited excerpts from Third Party sources – including Colliers International, for indicated typical valuations which he then used as inputs for "Vacancy Rate"; "Vacancy Shortfall"; "Non-recoverables"; and "Capitalization Rate". Thereupon, the Complainant concluded on page 29 of C-1 that his calculations, based on an Income Approach to Value calculation using such inputs, indicated a market value of $5,475,000 for the subject. However, the Complainant volunteered that perhaps a Cap Rate of 7% instead of his utilized and "more aggressive" 7.25% might be more appropriate for the subject, which would have produced a higher, but undefined alternate value.

The Complainant argued that the City's "Assessment Summary Reports" (not provided) identify each industrial building as having been assigned a Quality rating ranging from A to C. He argued in document C-1 and in his rebuttal document C-2 that his market comparables retained quality ratings similar to the subject which he said was B+, whereas the City's five market comparables did not. Therefore, he argued, the City's market comparables are not comparable based on "quality" alone.

The Respondent presented his Brief R-1 and argued that the entire basis of the Complainant's market-based argument of a paucity of sales in this complaint, is fundamentally flawed and is simply incorrect. Moreover, he noted that notwithstanding the large number (154) of sales available, - which the Complainant presented in his own evidence, the Complainant has arbitrarily limited his own access to market data by insisting on using only one year of sales. He clarified that the City has used three years of sales to assess the subject, all of which were analyzed by the City in its Multiple-Regression Model using a professionally-accepted process under Mass Appraisal.

The Respondent clarified that unlike the Complainant's one year "base year", the City's "base year" for analyzing sales is three years - from July 1, 2007 to June 30, 2010. He reiterated that in preparing the 2011 assessments, the City had used three years of sales (some 154) in its analysis of the market, all of which were posted on the City's website for use by the public, and which the Complainant has copied into his evidence package C-1.

The Respondent argued that the Complainant's market comparables are not comparable to the subject or to each other. Moreover, he noted that while the Complainant has stressed the need for "homogeneity" among comparable properties, this does not mean that each individual site characteristic for each property must be identical in order for comparability to be achieved. He noted that according to accepted industry practice, the City can and does make computerized adjustments to like-properties to effect a reasonable measure of comparability where warranted. He noted that the Complainant has made no adjustments whatsoever to his comparables.

The Respondent argued that in the Complainant's application of the Income Approach to Value methodology to value the subject, the Complainant's calculations are invalid, based on the use of faulty data. He argued that the inputs used by the Complainant are based on broadly-based typical third-party market data which is non-specific to the subject's location.

In addition, the Respondent questioned the Complainant's use of third-party "Asking Rates" instead of solid "Actual" lease/rent rates from properties either nearby the subject or elsewhere. He also challenged the reliability of the "actual" rates identified in the Complainant's four leases on page 22 of C-1, since the specific site addresses and other important particulars of the four properties were unavailable and hence could not be compared either to one another, or to the subject. In support of his position, he provided a copy of Calgary Assessment Review Board Decision LARB 0009/2011-B.

Moreover, the Respondent argued that the Complainant is mixing "actual" rates with "typical" rates for his inputs to his Income Approach to Value calculations and this is flawed because it does not meet Appraisal Institute Guidelines. In addition, he clarified that he had tested the Complainant's income parameters and they all greatly under-assess the subject

The Respondent clarified that the Complainant has made much of the "Quality" rating appearing on the City's Assessment Summary Reports. He noted that this rating is used by the City only for Business Assessment purposes and played absolutely no part in Property assessments for the subject and neighbouring properties. Therefore any arguments raised by the Complainant regarding this factor are not relevant. He also noted that through several years of analysis, the City has determined that "Quality" is a proxy for "year-of-construction" and therefore if the "Quality" characteristic is also used simultaneously in the assessment model, it effectively is double-counting which would "skew" the results in a property assessment calculation.

In support of his position, and in a matrix on page 23 of Brief R-1, the Respondent provided five market sale comparables for the subject. The five time-adjusted sales were intended to demonstrate that sales of comparable sized properties (ranging from 43,745 SF to 71,742 SF) indicated a range of values from $98 per SF to $142 per SF with a median value of $119 per SF which supports the assessment at $119 per SF. He explained that the five sales (from a total of 154) were chosen because of the similarity of many of their individual characteristics to the subject, and that all sales were well within the City's 3-year analysis period.

The Respondent outlined in some detail, the similarities and slight differences of all of his property sales to the subject, noting that certain "adjustments" had been made to year of construction (age); site coverage; sale date; finish; and parcel size, among others, by the City's computerized assessment Model to bring them to a professionally-accepted level of comparability. The Respondent also clarified that all seven of the City's key adjustment categories for industrial properties were also posted on the City's website and have been available for some time to the public and the Complainant. He argued that his sales and equity evidence demonstrate reasonable value within a range as is professionally required.

The Respondent argued that while the Complainant has long had access to the City's seven adjustment factors information, he had confirmed to the Board that he had made no adjustments whatsoever to any of his comparable properties. Therefore, the Respondent argued, their comparability to the subject is invalid and the conclusions drawn from them by the Complainant are seriously flawed.

Ultimately the Respondent noted that the Complainant's value conclusions appeared to be based on faulty methodology that is not industry-accepted. The Respondent requested that the Board confirm the assessment at $8,370,000.

Board's Analysis and Conclusions - Reasons

The Board concludes from the evidence that the Complainant's position on this issue contains a number of fundamental and fatal flaws.

Firstly, the Complainant has incorrectly defined the City's "base year" as a one-year period – that is from July 1, 2009 to June 30, 2010. On this basis, the Complainant appears to have rejected most of the City's market sales which occurred outside this narrowly-defined period. Moreover, the Complainant has effectively restricted its own search for comparable properties to this one-year period, arguing in so doing, that there is a paucity of sales data to work with and so it must therefore use an Income Approach to Value methodology which was not the methodology used to assess the subject.

Secondly, it is clear from the evidence that the City's so-called "base year" is a three-year period wherein all valid sales from July 1, 2007 to June 30, 2010 – some 154 sales, were used to analyze the market. Moreover, these 154 sales, and the City's methodology for analyzing them, have been published on the City's website since the first of this year (2011) and available to the Complainant. The Complainant appears to have either somewhat disregarded, or not taken advantage of this information. In the Board's view, the Complainant failed to effectively challenge the City's position on this point, preferring, as noted, to limit himself to the noted one-year "base year" period.

Thirdly, the Complainant has failed to make any adjustments whatsoever to his market sale comparables. The Board accepts the Respondent's position that it is necessary to make industry-accepted adjustments for sale date; age; site coverage; parcel size etc. such that an appropriate comparison to the subject can be made. It is clear to the Board that when such adjustments are made – particularly time-adjustments to selling prices, such as the Respondent has done, that the latter's comparable sales evidence appears to support the assessed value and the Complainant's does not.

Fourthly, the Complainant has made much of the differing "Quality" ratings attributed to each property, a rating used only for Business Assessment purposes but which played no part in the assessment of the subject. The Board accepts the City's clarification that "Year-Of-Construction" is essentially a proxy for "Quality" in the market, and to permit the City's computer model to simultaneously insert a variable for both characteristics, would appear to insert an undesirable anomaly into the calculation and lead to a skewed result. Therefore the Board rejects the Complainant's arguments that the City's market data is flawed because the "Quality" ratings are not similar.

Fifthly, and notwithstanding points #1 and #2 above, the Board concurs with the Respondent that the Complainant's inputs into his Income Approach to Value calculations appear to be fatally-flawed because they inappropriately mix actual and typical values. Moreover, they appear to be largely unsupported, unverifiable, and speculative (i.e. lease values based on "Asking" rates, and/or with no site address, etc). Therefore, the value conclusions extracted by the Complainant from these calculations appear to the Board to be unreliable. Calgary Composite Assessment Review Board Decision "CARB 1302/2011-P page 5 of 7, paragraph #2 speaks clearly to this matter:

> ""The Board understands that calculating the value of a property using the income approach must be based on a consistent methodology. In other words, if "actual" rates are to be used to calculate a value using and income approach, then all factors in the calculation must reflect actual values. On the other hand, if typical rates are used to calculate a value using an income approach, then all factors in that calculation must be typical values. It is not appropriate to calculate the value of a property with the income approach using some factors derived from actual data and some factors derived from typical data. That said, for assessment purposes, typical rates are required."

Therefore, on balance, the Board considers that the Complainant's arguments fail regarding this issue.

Issue #2 "The assessment is inequitable when compared to comparable properties."

The Complainant attempted to provide an "Equity Study" on page 10 of his Rebuttal Brief C-2 in an effort to demonstrate that the assessment of the subject is inequitable when it is compared to comparable properties. However, this was deemed to be new evidence by the Board and not accepted. (see page 2 of this Decision Report).

The Respondent however presented seven assessment equity comparables which he considered supported the assessment of the subject. He noted that the site coverages; years of construction; levels of finish; parcel sizes; rentable building areas, and other important characteristics appeared to be quite similar to each other and to the subject and supported the assessment.

The Respondent again requested that the assessment be confirmed at $8,370,000.

Board's Analysis and Conclusions - Reasons

The Board finds that the portion of the Complainant's complaint based on equity, fails due to a lack of equity evidence. None was provided. In the contrary, the Respondent provided seven equity comparables whose individual characteristics appear similar to each other and to the subject. They appear to support the assessment.

Complainant's Rebuttal

The Complainant submitted Brief C-2 being his rebuttal document. He noted that AEC concurs with the City regarding Multiple Regression analysis, but disagreed with the City Model's ability to accurately predict the assessed value of buildings over 70,000 SF. He further argued that:

1. Only five sales submitted by the City in R-1 – limited extent
2. Sale dates vary from July 2008 to Oct. 2009 – not homogeneous
3. Only one sale in the base year (30-Oct.-2009)
4. Site coverage vary from 21.52 to 45.17 – not homogeneous
5. Years of construction vary from 1982 to 2000 – not homogeneous
6. Property locations vary from NE to SE – not homogeneous
7. Finish levels vary from 6 to 43% - not "homogenous"
8. Building sizes vary from 43,745 to 71,742 SF – not homogeneous
9. Parcel sizes vary from 1.73 to 7.36 acres – not homogeneous
10. Land uses vary from IG to IC – not homogeneous

The Complainant argued that with only one sale in his one-year base year, the City has "too few sales to model the entire industrial marketplace without reconciling their approach to value against the income approach". The Complainant briefly critiqued each of the City's five sales comparables and provided the RealNet summary sheets for them.

The Respondent argued that he had addressed each of these ten points in great detail during the hearing and still profoundly and fundamentally disagreed with the Complainant's arguments.

Board's Analysis and Conclusions - Reasons

The Board is satisfied from its own close examination, that the City's market and equity comparables are similar to the subject and each has received appropriate "adjustments" as required pursuant to professionally-accepted practice. It was noted that the Complainant's four market sale comparables were not adjusted and hence their comparability to each other and the subject was very questionable – particularly when it is noted that the subject is 70,217 SF and all of the Complainant's comparables were well over 100,000 SF – one being 301,930 SF.

In addition, the Board accepts the Respondent's position that using "homogeneous" comparables does not mean using "identical" comparables.

Board's Summary Conclusions

The Board is therefore of the view that considering all of the foregoing, and on balance, the Complainant has failed to persuade the Board on the basis of the evidence presented, that the assessment is either incorrect or inequitable.

Board's Decision:

The assessment is confirmed at $8,370,000

DATED AT THE CITY OF CALGARY THIS 7th DAY OF September 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. C-2	Complainant Rebuttal Document
3. R-1	Respondent Disclosure Brief

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.*