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:

General Supplies CO. LTD. (as represented by Mr. Patrick Mahoney), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
R. Cochrane, 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:	**066078403**
LOCATION ADDRESS:	**1720 Bow TR SW**
HEARING NUMBER:	**62684**
ASSESSMENT:	**$11,190,000**

This complaint was heard on 6th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Ave. NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *Mr. P. Mahoney, Agent for Owner*
- *Mr. R. Wolfe Lessee*

Appeared on behalf of the Respondent:

- *Mr. D. Lidgren Assessor, City of Calgary*

Preliminary and/or Procedural Matters:

The Board dealt with six preliminary matters as described below. The first two matters involved Board members assigned to this hearing, and the last four matters were raised by the Respondent.

Matter #1

The Chairman advised that in a social setting two months ago and prior to being assigned to Chair this hearing, of which he had no prior knowledge of appointment, he had discussed the matter of the subject's and surrounding lands' apparent site contamination in casual conversation. The discussion took place with parties who had previously been directly involved with its remediation. The Chairman acknowledged that while he has no prior knowledge whatsoever of the evidence or argument to be presented by either party to this hearing today, he wanted all parties to be aware of this potential conflict.

The Complainant Mr. Mahoney and the Lessee conferred in private, returned after a few moments and stated categorically that they had no issue with the Chair continuing in his assigned capacity for this hearing.

The Respondent confirmed that he had no issue with the Chairman continuing in his assigned capacity for this hearing.

Board's Decision – Preliminary Matter #1

The Board members conferred and the Chairman decided to continue to Chair this hearing.

Matter #2

Board Member Mr. Zindler advised that in his personal capacity as a Professional Real Estate Appraiser he has been contracted in the past to complete Real Estate appraisals for other members of the law firm Mr Mahoney is associated with. However, he stated categorically that did not know Mr. Mahoney personally or professionally and had not, to the best of his knowledge, undertaken any work for Mr. Mahoney. Mr. Zindler wanted all parties to be aware of this potential or perceived conflict.

The Complainant Mr. Mahoney stated categorically that he did not know Mr. Zindler, and today is the first time he had met him. Nor has Mr. Mahoney contracted Mr. Zindler for Real Estate appraisal purposes. In addition, while his firm may have contracted Mr. Zindler in a professional capacity, Mr. Mahoney stated categorically that to the best of his knowledge, he is not aware of any of his firm's files where Mr. Zindler's work might have been involved. Therefore, he argued that he has no issue with Mr. Zindler serving in his capacity as a Board Member in today's hearing regarding the subject file.

The Respondent Mr. Lidgren clarified that he took no issue with Mr. Zindler participating as a Board Member in today's hearing.

Board's Decision – Preliminary Matter #2

The Board members conferred, and the Board (and Mr. Zindler) decided that Mr. Zindler should continue to participate in this hearing.

Matter #3

The Respondent Assessor advised the Board that in his view, the Complainant has not complied with the "Municipal Government Act" (MGA) and specifically Section 8(2)(a)(i) of "Alberta Regulation 310/2009" being "Matters Relating To Assessment Complainants Regulation" (MRAC). Section 8(2)(a)(i) of MRAC states:

"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, and

(ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

(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, and
>
> (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;
>
> (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."

The Respondent argued that Section 8(2)(a)(i) of MRAC is a mandatory provision which states that the Complainant "***Must**, at least 42 days before the hearing date, ...disclose to the respondent and the composite assessment review board :*

(a) .....a summary of the testimonial evidence;

(b) .....a signed witness report for each witness;

(c) .... 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,"

The Respondent argued;

(a) firstly, that the Complainant Mr. Mahoney has not provided a "summary of testimonial evidence" in a "written narrative" because the front page of the Complainant's primary disclosure Brief C-1 is merely an index or list of what is contained in that brief. He argued that since there is no "written narrative", the City is disadvantaged because the Complainant has not complied with the Municipal Government Act or Section 8 of MRAC.

(b) secondly, he argued that the Complainant's Rebuttal document C-2 contains a 3-page narrative outlining selected elements of the Complainant's position regarding this appeal, but it is not in his primary document C-1. He also argued that the Rebuttal document contains several pieces of new information, including an unsupported re-calculation of the subject's perceived property value, not in the Complainant's primary Brief C-1 and is in fact not even rebuttal of the City's evidence. It should therefore not be allowed into evidence.

(c) thirdly, the Complainant Mr. Mahoney has not provided a "signed witness report" for any party to appear as a witness for this hearing. He clarified that there is a "Will Say"

statement from Mr. Wolfe the Lessee in the Complainant's rebuttal document C-2. He noted that Mr. Wolfe is in attendance today and is seated beside Mr. Mahoney at the Complainant's table. He argued that pursuant to Section 8 of MRAC, Mr. Wolfe should not be permitted to present evidence to this hearing as a witness.

(d) fourthly, the Complainant Mr. Mahoney has not provided any "written argument" in a form that would allow the City to effectively respond to this complaint. Therefore, because there is no "written argument" in C-1, the City is disadvantaged because the Complainant has not complied with the Municipal Government Act or Section 8 of MRAC.

The Complainant Mr. Mahoney argued that in his opinion, he has complied with the MGA and Section 8 of MRAC because the eight points identified on page 1 of his Brief C-1 are written more in the style of prose than a list. Therefore, any reasonable person reading page 1 of Brief C-1 could readily come to a conclusion as to the Complainant's key issues and the evidence and argument he intends to present regarding those issues. He indicated that the materials in Brief C-1 also support this perspective.

Mr. Mahoney also clarified that Mr. Wolfe would not be a witness in this hearing. Therefore there was no requirement for a signed witness statement. Mr. Wolfe is the subject's Lessee, and was currently observing but would be leaving the building momentarily. Subsequently Mr. Wolfe departed the Hearing.

The Complainant argued that the additional evidence in his rebuttal document is intended to support his position that the subject is over-assessed and should be valued at $7,000,000.

Board's Decision – Preliminary Matter #3

The Board examined page 1 of the Complainant's Brief C-1 and concluded that despite certain brevity, the Complainant has reasonably complied with the Municipal Government Act and Section 8 of MRAC. The Board concurs with the Complainant that any reasonable person reading page 1 of C-1 could determine the nature of the concerns being raised by the Complainant, and his general approach for addressing each of them. The Board fails to see how the Respondent could be disadvantaged by the Complainant's approach relative to this matter.

The Board noted that Mr. Wolfe departed the Hearing and is therefore not a witness. No witness statement is required.

The Board examined the Complainant's rebuttal document C-2 and concurred with the Respondent that it contains several pieces of new information. Specifically it contained a substantial 1990 Geotechnical report regarding hydrocarbon contamination of the area of the former Canada Creosote Site; excerpt of a September 26, 2011 Calgary Herald newspaper article and related City correspondence regarding soil contamination and redevelopment matters; and an excerpt of a USA sourced legal brief on suggested new methodologies for assessing contaminated lands. These documents are excluded from this hearing.

The Board decided that the Complainant's alternate calculation of value of $7,000,000 is admissible because it is a legitimate rebuttal to the City's calculations of value.

Matter #4

The Respondent argued that the Complainant has identified only two substantive issues on the Complaint Form ;

(a) The subject site is contaminated and the assessment does not take this into account; and,
(b) The year-over-year near 50% increase in assessed value of the subject is wrong.

He argued that pursuant to Section 9 of MRAC the Complainant must be limited to arguing these two issues. Section 9 of MRAC states as follows;

"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.

(3) A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.

(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant."

The Complainant responded that it was his intention to deal only with the two issues as identified by the Respondent.

Board's Decision – Preliminary Matter #4

The Board advised the parties that pursuant to Section 9 of MRAC, the Board would only entertain evidence and argument from the Complainant related to the following two issues:

(a) The subject site is contaminated and the assessment does not take this into account; and,
(b) The year-over-year near 50% increase in assessed value of the subject is wrong.

Matter #5

The Respondent argued that the Complainant has identified a requested alternate assessment value for the subject of $7,000,000 on the complaint form. However, in examining the Complainant's previously-submitted evidence package, the Respondent argued that the

Complainant has provided no market evidence, comparable property sales, or duly-supported calculations that would allow the City to understand how the Complainant "got to" the $7,000,000 value. He noted that the Complainant had provided a "Capitalization Analysis" under his "Tab 7" but he considered it "unsupported "by any valid market evidence. He argued the Board should not accept the Complainant's alternate valuation of $7,000,000.

The Complainant argued that his evidence package and oral argument will "speak to" the requested $7,000,000 valuation for the subject in due course.

Board's Decision – Preliminary Matter #5

The Board advised that to this point in the proceedings it had not heard any evidence from either party regarding the merits of any aspect of the Complainant's appeal. Therefore the Board would not make any decision regarding the Complainant's request for a reduced assessment of $7,000,000 until it had received and examined all of the evidence and argument from both the Complainant and Respondent regarding this matter.

Matter #6

The Respondent argued that the Complainant Mr. Mahoney, being a qualified Legal Counsel and representative of the Lessee Mr. Wolfe, should declare at this time whether or not he is acting in the capacity of a "Lawyer" for, or as an "Agent" of the Lessee in this hearing. He argued that if Mr. Mahoney today acts in the capacity of Legal Counsel, then he must be restricted to merely "leading evidence" and not presenting it. The Respondent argued that if Mr. Mahoney is today acting as an Agent for the Lessee, then it would be entirely appropriate for him to present evidence on behalf of the Lessee.

Mr. Mahoney advised the Board that he is acting in the capacity of an "Agent" for the Lessee and hence is the Complainant in this appeal hearing.

Board's Decision – Preliminary Matter #6

The Board took note of Mr. Mahoney's declaration that in today's hearing he was acting in the capacity of an "Agent" for the Lessee Mr. Wolfe. He is therefore a Complainant and is afforded the rights and responsibilities associated therewith.

Property Description:

The subject is the General Supplies Company Limited (GSL) General Motors automotive dealership property located at 1720 Bow Trail SW and directly across 16th ST SW from the Greyhound Bus Depot in the community of Sunalta. The 10.47 acre site contains two "B" quality buildings, one of 750 square feet (SF) built in 1969, and a second of 92,180 SF built in 1964. The site is zoned Commercial Corridor 3 (C-COR3) and has been coded by the City as having "site influences" of: (a) corner lot; (b) traffic expressway/freeway; (c) and environmental concerns. The subject is assessed using the "Cost Approach to Value" methodology at $11,190,000.

Issues:

1. The subject site is contaminated and the assessment does not take this into account.
2. The year-over-year near 50% increase in assessed value of the subject is wrong.

Complainant's Requested Value:

$7,000,000 on the Complaint Form.....then $3,500,000 in his rebuttal Brief C-2.

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

Issue # 1: "The subject site is contaminated and the assessment does not take this into account"

Complainant's Perspective

The Complainant provided his Brief C-1 and presented a copy of the City's Assessment Summary Report for the subject. He clarified that the subject is part of the former Canada Creosote Site which still suffers from contamination by hydrocarbons. He argued that more recent geotechnical studies calculate remediation costs at anywhere from $30 to $100 million.

He briefly referenced the City's "Cost Approach to Value" calculations for the subject and suggested that a Cost Approach is an acceptable methodology in certain circumstances, however an "Income Approach to Value" methodology should have been used by the City for the subject instead. He argued that the Legislation does not dictate how assessments should be calculated. He argued that he had prepared an "Income" based calculation and would present it in his rebuttal document in response to the City's Cost Approach calculations.

The Complainant argued that the City had also completed an Income Approach calculation for the subject to test the validity of its Cost Approach model. However, he argued, the City used "typical rents" from the area but not "actual" rents from the subject in its calculations. He argued a potential buyer of the site would have used the latter. He also argued that in any Income Approach calculation conducted for the site, the capitalization rate must be higher than typical market because of the inherent risk of a contaminated site. However, he provided no documentary or market evidence in support of this position.

The Complainant presented a 5-page copy of the current lease on the subject between General Supplies Co. Ltd and the Lessee Mr. Wolfe. He referenced Article 2(b) therein which identifies the Landlord's right to terminate the lease given certain conditions etc., one of them 24 months notice. He argued that the "termination of lease" clause - Article 2(b) constitutes additional risk for a lessee which must be factored into the capitalization rate as well. However he provided no documentary or market evidence to support this position.

The Complainant argued that in preparing the assessment, the City failed to take into consideration existing documented contamination in the area and on the site. He referred the Board generally to C-1 and the 205 page 2006/2007 Geotechnical study completed by UMA Engineering Ltd for the City. However, he did not present it to the Board. He noted that in its

Cost Approach calculations, the City reduced the assessment by 30% for "Environmental Concerns" but he did not know the basis for this reduction or whether it should have been higher. He argued that as the Complainant, he is not compelled to advise the Board what the reduction should be, but only that he must demonstrate that there is a problem with it. He argued that he has done so.

He argued that because the site is "sterilized", therefore financing for developing the site would be unavailable and this would reduce its value further in the market, although he offered no supporting evidence.

The Complainant also introduced, but did not review in detail, a 13-page, year 2000 Decision of the Municipal Government Board (MGB 207/00) for a City of Edmonton property. He suggested that it dealt with an MGB decision to increase the capitalization rate on the Edmonton property – valued by Income Approach, to 18% due additional perceived risk from onsite contamination. He argued that this decision is relevant despite it being an Edmonton property because it deals with an Alberta contaminated site and is, in his view, precedential.

The Complainant introduced the City's 2011 Property Assessment Notice for a nearby auto dealership – Renfrew Chrysler, directly across from the subject and north of Bow Trail SW. It is valued by the City at $1,210,000. The Complainant argued that this property is comparable to the subject in use and location and may have been affected by the general contamination residue from the former Canada Creosote site like the subject. However, other than an aerial photo of the site and the subject, he provided no documentary evidence that this is so, nor any map defining the extent or limits of contamination as of June 30, 2010 or December 31, 2010.

The Complainant introduced his rebuttal Brief C-2 and referenced his capitalization rate analysis which he argued should have been used to value the subject in an Income Approach to Value calculation. The Complainant argued but provided no documentary evidence that the City had increased the assessment on the adjacent Renfrew site from $1,210,000 to $11,620,000, then promptly decreased it to $8,490,000. He questioned why the City would not have reduced the subject by the same amount.

In support of his query, he clarified that the Lessee's 2009 lease on the subject stipulates an annual actual rent of $530,000 per year, increasing to $700,000 per year in 2012. He argued that by using current actual $530,000 rent, and the 18% capitalization rate imposed in October 2000 by the MGB for a contaminated Edmonton site, the subject's value is $2,944,444. Using the 2012 (future) rent of $700,000 and an 18% cap rate, the value is $3,888,888.

The Complainant argued that at a reduced value for the subject of $8,300,000 (pursuant to the alleged Renfrew reduction) and a current actual rent of $530,000, the cap rate is calculated to be 6.38%. Using future rent of $700,000 the cap rate is 8.4%. He argued that these cap rates are too low given the subject's site contamination and difficulty of securing development financing for it, and therefore the Edmonton cap rate of 18% is relevant and appropriate.

The Complainant provided an Alberta DataSearch sales information sheet detailing the particulars of an April 29, 2010 sale of 37,462 SF of land for $2,254,608 from General Supplies Co. Ltd. (GSL) to an independent party. The value of the sale is $60.18 per SF. He argued that he has provided no other market sales because there have not been any in the area, except to the City which he considered invalid. He argued that the City has purchased several land parcels over time, some of which may have been contaminated.

The Complainant requested that the assessment be reduced to $3,500,000.

Respondent's Perspective

The Respondent argued that the Complainant's position in this appeal is entirely unsupported, flawed, and speculative. He argued that the Complainant has essentially no market evidence, and the one piece of evidence he has submitted – i.e. the April 2010 Alberta DataSearch documented sale of 37,462 SF of land from the owners, at $60.18 per SF, supports the assessment. He clarified that the City has valued the subject at approximately $30 per SF. He clarified that the City's assessment model – which the Complainant has already referenced in his own Brief C-1, values the first 20,000 SF of land at $65 per SF and the remaining 436,082 SF at $28 per SF. Therefore, he argued, the Complainant's own evidence supports the assessment.

The Respondent argued that the Complainant's alternate calculations of Income Approach value for the subject at $3,500,000 are misguided, because his assumptions of an 18% Capitalization Rate in those calculations is based on a very dated 1999 assessment, and a 2000 MGB appeal (MGB 207/00) of a property in Edmonton. He argued that the Edmonton and Calgary markets are very different. He argued that simply because two sites in different jurisdictions may be contaminated, does not automatically make them, and the valuation inputs used to assess them, comparable. He argued that there are no means to identify with any degree of certainty whatsoever, precisely what evidence and argument was advanced to the Board, and which led to the Edmonton decision. Therefore, he argued, the Edmonton decision is irrelevant and the Complainant's reliance upon the 18% cap rate is flawed.

The Respondent argued further, that the rent inputs for the Complainant's alternate Income Approach calculations are invalid because he included "actual" rent data from the subject using values from a very dated 1994 lease. To confirm this point, he provided the City's 2010 Assessment Request for Information (ARFI) sheets which were returned to the City from the Lessee. He also supplied a copy of the current lease for the subject. He clarified that in Mass Appraisal, the relevant assessment legislation requires that "typical" values be used. The Respondent argued that the Complainant's calculations of a $3,500,000 assessment value are flawed on this point alone. The Respondent argued that there are many MGB decisions which confirm this point.

The Respondent argued that the Complainant's methodology attempts to determine "Leasehold Interest" whereas the City is required to determine a "Fee Simple Estate" valuation. He argued that for assessment purposes, the Complainant's methodology is flawed.

On page 104 of R-1 the Respondent introduced a matrix of three market sales which occurred nearby the subject, to support the land value used in the City's Cost Approach to Value assessment calculation for it. The three sales occurred at 850 – 16 ST SW; 915 - 15 ST SW; and 905 to 915 – 15 ST SW. The Mean value was $79 per SF; the Median value was $85 per SF; and the Weighted Mean was $85 per SF for the three sales.

The Respondent argued that while he has provided three market sales, the Complainant has advised the Board that he has provided no sales. Moreover, he noted that while the

Complainant may argue as to the nature of the sales (two to the City), he as the Respondent, has one completely arm's length sale (the nearby Renfrew Chrysler site) that supports the assessment and the Complainant has none. He noted that the Renfrew site – a contaminated location like the subject, was purchased for approximately $5.5 million in 1998 and today is valued at approximately $30 million - all of which speaks to the value of property, contaminated or otherwise, in the area.

The Respondent clarified that the City used a base value of $65 per SF to assess the subject. He further clarified that in calculating the land value, the first 20,000 SF were assessed at $65 per SF and the remaining 436,082 SF were assessed at $28 per SF. He noted that a 5% premium was added for the site being a corner lot, but a 30% reduction was subtracted for "environmental concerns" – all of which resulted in a land value of $10,132,722 or $22.22 per SF. He clarified that the City has studied the market value of contaminated sites in the City for a number of years and has concluded that in the case of the subject and nearby affected lands, an appropriate reduction in assessment should be 30%. However, he was unable to document precisely how that value was achieved, particularly for the subject.

He argued therefore, that contrary to the argument of the Complainant, the City has recognized the ongoing contamination issues with the subject and reduced the assessment accordingly.

Board's Analysis and Conclusions – Issue #1 - Reasons

The Board considers that the Complainant's position in this appeal regarding Issue #1 fails for the following reasons:

1. The Complainant provided no market evidence in support of his position that the City's assessed land value for the subject is incorrect. The one sale at 915 – 15 ST SW for $60.18 per SF which the Complainant provided an Alberta DataSearch sheet, and on which he only elaborated briefly, supported the assessment at an average of approximately $30 per SF.

2. The Complainant argued that the City's three market sales were invalid, but he provided no market evidence to support this position. The Complainant advanced that he did not have any market evidence to provide to the Board.

3. The Respondent provided three market sales, two to the City of Calgary and one arm's-length sale, the values of which were significantly greater than the value used to assess the subject. These three market sales supported the assessment.

4. The Parties and the Board all agree that the subject, part of the former Canada Creosote site, is contaminated, but the Board only received very dated copies of previous environmental investigations on the site, and no evidence from either Party as to the location and extent of the contamination as of June 30, 2010 or as of December 31, 2010. Therefore the Board is unable to make any determination as to the nature and extent of the contamination on the site "at date", or its potential impact on the assessed value "at date".

5. The Board noted the City has provided a 30% reduction in the assessment calculation for site contamination. While the City was unable to support the source of this value, the Complainant provided no evidence or calculations whatsoever to confirm that the 30% reduction was either insufficient or excessive, and in fact, what percentage it should be.

6. The Complainant argued that it was not incumbent on him to demonstrate what the correct value reduction should be as a result of the subject's contamination. The Board disagrees with the Complainant. The onus is on the Complainant to demonstrate to the Board precisely where and how the assessment is incorrect, and what the correct assessment should be. The Complainant has failed to do so.

7. The Complainant provided no market data, calculations, or other documentation to support his initially-requested alternate value of $7,000,000. The Board concurs with the Respondent that, having reviewed the Complainant's evidence packages C-1 and C-2, this requested value is speculative and unsupported.

8. The Board considers that the Complainant's calculations of alternate value using the Income Approach to Value are flawed for the following reasons:

    a. The Complainant erroneously mixes "actual" rent values in a calculation that relies on "typical" values under Mass Appraisal. The Board notes that there are many previous MGB and Local Assessment Review Board decisions that address this matter as flawed methodology.

    b. The Complainant erroneously derives an 18% capitalization rate from a 2000 MGB decision regarding a 1999 City of Edmonton Assessment Review Board hearing for a contaminated Edmonton property which is clearly outside the Calgary market. The Complainant has conveyed to this Board that the Edmonton property is contaminated and received an 18% cap rate from the MGB. However, the extent to which it is contaminated, the evidence presented to the Board, and the applicability therefore of an 18% cap rate to the subject, is unknown.

9. The City has provided three market sales with a Mean, Median, and Weighted Mean value of $79 to $85 per SF whereas the City has assessed the subject at a base rate of $65 per SF and an average value of approximately $30 per SF – using the City's "declining rate" formula. When coupled with an additional 30% reduction in value for environmental contamination, the Board finds that contrary to the Complainant's assertions, the City has made a reasonable effort to recognize the environmental issues on the site. The Complainant failed to provide sufficient evidence, or demonstrate to the satisfaction of the Board, that the City approach to assessing the subject is flawed.

10. The Complainant argued but provided no evidence to the Respondent or the Board to demonstrate that the site is "sterilized" due to contamination as he alleged, and that certain "financing" is unavailable to develop or redevelop the site.

Issue #2: "The year-over-year near 50% increase in assessed value of the subject is wrong."

Complainant's Perspective

The Complainant argued that the 2010 assessment was $7,560,000 but increased to $11,190,000 in 2011 which, by his estimates equates to an approximate 50% increase. He argued that this is an excessive year-over-year increase and demonstrates that the assessment is incorrect.

Respondent's Perspective

The Respondent argued that many Municipal Government Boards have ruled that a percent increase or decrease in an assessment is not, of itself, a valid reason for an Assessment Review Board to alter an assessment. He clarified that both the 2010 and 2011 assessments were and are based on market sales for the relevant time frames, and the City has calculated the subject's assessment based on those sales.

Board's Analysis and Conclusions – Issue #2 - Reasons

The Board considers that the Complainant's position regarding Issue #2 in this appeal fails for the following reasons:

1. The Board finds that the Complainant provided insufficient valid market or other evidence to demonstrate conclusively to the Board, precisely what the percentage increase should be, and on what basis.

2. The Board concurs with the Respondent that a percentage increase/decrease is not, of itself, a valid reason for a Board to change an assessment.

3. The Board finds that many other assessment appeal boards have also ruled that a percentage increase/decrease is not, of itself, a valid reason for a Board to change an assessment.

Board's Decision:

The assessment is confirmed at $11,190,000.

DATED AT THE CITY OF CALGARY THIS 17 DAY OF November 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
2. C-2	Complainant Disclosure
3. R-1	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.

For Administrative Use Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Retail - new automotive	Stand-alone	Equity, market value, and per cent increase	Market zone Comparisons