# CALGARY
# 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:**

***Caltrax Inc., COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***S. Barry, PRESIDING OFFICER***
***J. Joseph, MEMBER***
***E. Reuther, MEMBER***

This is a complaint to the Composite Assessment Review Board (CARB) 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:** | **077064707** |
| **LOCATION ADDRESS:** | **1805 30 Av S.E.**<br>**Calgary, AB** |
| **HEARING NUMBER:** | **61028** |
| **ASSESSMENT:** | **$8,870,000** |

This complaint was heard on 18th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *A. Tymensen, Caltrax Inc.*

Appeared on behalf of the Respondent:

- *R. Luchak, City of Calgary*

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

There were no procedural or jurisdictional matters raised at the hearing.

**Property Description:**

The property under complaint is a 13.34 acre industrial parcel located in south-east Calgary at 1805 30 Av S.E., and includes two buildings of 122,961 and 2,820 square feet (sq.ft.), which occupy 21.64 per cent of the site. The land use district is Heavy Industrial (I-H). The property is assessed at $8,870,000 for 2011.

**Issues:**

1. The assessed square footage is incorrect.

2. The 2011 assessment does not correctly reflect the impact of contamination of the site and previous assessment reductions that acknowledged that contamination.

**Complainant's Requested Value:** $6,212,000

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

1. The Complainant noted that the assessment was based on 125,781 sq.ft. of building space whereas the blueprints for the building identified an area of 122,961. The Respondent acknowledged the size of the main building but noted that there is an additional building, deemed by the City to be an outbuilding which is 2,820 sq.ft. bringing the total area to 125,781. The Respondent further noted that while the main building is assessed at $102 per sq.ft., the outbuilding is only assessed at $10 per sq.ft.

   With respect to this first issue, the Board confirms the total building area to be 125,781 comprised of two separate elements of 122,961 sq.ft. and 2,820 sq.ft.

2. The Complainant has provided extensive documentation on the contamination of the site commencing with its purchase of the property in 2002 at which time the total purchase price of $3,501,800 was allocated as $987,469 for the building(s) and $10,000 for the land with

the balance of $2,504,331 assigned to other assets. A retrospective appraisal was conducted on behalf of Canada Revenue Agency in 2006 in order to determine, for taxation purposes, the appropriate allocation of the assets as of April 22, 2002. That appraisal allocated $1,365,700 to the land and $1,645,850 to the building but clearly notes that this value does not consider any environmental issues. At the time of sale the purchaser was aware of these issues and had knowledge that remediation costs of $4,000,000 short term and $2,000,000 long term were possible with respect to just one of the contaminated areas. The memorandum does not document how these costs were derived but by this statement, it is understood that there may be some natural amelioration of the situation over time. The liability of adjacent owners was not determined for the purposes of this hearing.

The Complainant provided a December 19, 2001 report prepared by Keystone Environmental Ltd. that provides considerable detail on the nature and extent of the contamination particularly where levels of concentration exceeded then-current criteria and guidelines. Also included is a work plan for the "Decommissioning, Remedial Excavation, Detailed Design and Construction For" . . . "Drip Tray Installation" from May of 2001. In 2001, estimated expenses for this element ranged from $48,500 to $114,000. The Complainant operates under an Alberta Environment Permit to Operate which requires ongoing, semi-annual monitoring of the site with annual reports filed with Alberta Environment. The March 2011 report for the 2010 reporting year noted mixed results with some areas within and other areas exceeding the relevant guidelines. CH2M Hill, which provides the monitoring service, recommended that two additional monitoring wells be drilled. The current Alberta Environment permit to operate extends to July 31, 2020. The Complainant acknowledged that Caltrax has not undertaken any significant remediation efforts other than to ensure their own business practices do not make the current situation worse. This included the replacement of drip trays for approximately $450,000.

It is the Complainant's contention that the extent of the contamination and the potential costs of remediation adversely impact the value of the property in excess of the typical 30 per cent allowance for environmental issues and that attempts to sell the property have been frustrated by these issues. The Board noted, however, that there was no documentation of these costs or of any attempts to list or sell the property. The Complainant had originally assumed the current assessment would be reduced by 30 per cent for environmental issues and his complaint was largely based on the fact that it appeared there had been no reduction. The Complainant noted that assessments have increased substantially since the time of purchase with the last year-over-year increase amounting to approximately $1.5 million, or 20 per cent.

The Respondent's position, as shown on the 2011 Assessment Explanation Supplement, is that the land is assessed using the sales comparison approach for a total assessed value of $12,684,961, including the outbuilding, and that a 30 per cent reduction was applied to create a final assessment of $8,870,000, truncated. The maximum reduction allowed for these reasons under City policy is 30 per cent and, therefore, no additional reduction can be applied. It was the Respondent's contention that the amount of reduction provided in 2011 is equivalent to the cost of remediation as noted in the Complainant's disclosure document although the Board notes that the amount referenced there is ten years old, related to only part of the site and was undocumented. It is the Board's opinion that the argument is somewhat specious. The Respondent did not provide any sales comparisons in support of the assessment on the basis that he felt the only relevant issue, other than size, was the reduction for contamination. The Respondent could offer no explanation why the

assessment had increased from 2010.

Both the Assessor and the Board are bound by Provincial legislation in determining assessments. The *Municipal Government Act* (the Act) and *Matters Relating to Assessment and Taxation Regulation, AR 220/2004* (M.R.A.T.) dictate that the assessment must reflect the characteristics and physical condition of the property on December 31 of the assessment year (s.289(2) of the Act); must be determined using mass appraisal and typical market conditions for similar properties as of July 1 of the assessment year (s.2, s.3, M.R.A.T.); and, further, that the valuation standard is market value (s.6, M.R.A.T.) The Respondent can use, generally, any one of three options in determining the relevant market value: the Cost Approach, the Income Approach or the Sales Approach. In this case, although it is not supported in his submission, the Assessor has used the Sales Approach.

The Board is entitled to evaluate and weigh the evidence before it to determine if the assessment is fair and equitable ***having regard to the principles articulated above.*** That determination could result in a revised assessment. In this instance, however, the Complainant did not bring such evidence forward. The fact of the contamination is not controverted and the Board has little doubt that this would affect the market value of the land However, there is no evidence that the sale of the land has been attempted or affected by the current circumstances and the Complainant has not provided any sales or equity comparisons of similar properties as to size, land use district, or use, whether contaminated or not, that the Board could use to determine if the assessment is or is not fair and equitable. While the Respondent argued he did not need to support his sales approach because it was not argued, the Board notes that the assessment was indeed questioned and it would have been helpful both to the Board and to the Complainant to understand how that assessment was reached. The Board suggests that more information being provided in the future would be beneficial to the ratepayer. The taxpayer is as much entitled to a fair process as he is to a fair assessment.

Having said that, the Complainant did not provide any sales comparisons and therefore there is no basis for revising the assessment.

**Board's Decision:**

The 2011 Assessment is confirmed at $8,870,000.

**DATED AT THE CITY OF CALGARY THIS 27 DAY OF October 2011.**

Susan Barry

**S. Barry, Presiding Officer**

## APPENDIX "A"

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

| NO. | ITEM |
|---|---|
| 1. C1 | Complainant's Disclosure |
| 2. R1 | Respondent's 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.*