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:**

***Abacus Property Management Ltd., COMPLAINANT***

**and**

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

**before:**

***Ms. V. Higham, PRESIDING OFFICER***
***Mr. R. Deschaine, BOARD MEMBER***
***Mr. A. Zindler, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary (the City) and entered in the 2013 Assessment Roll as follows:

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|---|---|
| **ROLL NUMBER:** | **118003342** |
| **LOCATION ADDRESS:** | **6220 – 90 Avenue SE**<br>**Calgary, AB** |
| **FILE NUMBER:** | **70146** |
| **ASSESSMENT:** | **$3,490,000** |

This complaint was heard on 24th day of June, 2013 at the office of the Calgary Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- **Mr. Lenard Zuczek** **President and CEO, Abacus Property Management Ltd.**
- **Ms. Anita Donhuysen** **Appearing for the Complainant**

Appeared on behalf of the Respondent:

- **Mr. Ian McDermott** **Assessor, City of Calgary**

**Procedural or Jurisdictional Matters:**

[1] No preliminary matters were raised during the hearing.

**Property Description:**

[2] The subject property is a multi-building, industrial warehouse site located at 6220 – 90 Avenue SE, in the South Foothills region of Calgary. The 4.87 acre parcel is improved with three single tenant buildings constructed in 1995, which are 4,800 7,500, and 4,800 square feet (sf) in size. The land use designation on the site is I-G, Industrial General.

**Issues:**

[3] The Complainant identified one issue on the Complaint Form as under appeal, that being the assessment amount. During the hearing the Complainant confirmed the requested assessment value indicated on the complaint form, and raised two additional issues for the Board's consideration. Thus, the issues under appeal are:

a. Is the current assessment amount of $3,490,000 fair and equitable?

b. Is it appropriate to categorize the subject property as having an "Additional Land" component, to which a valuation is attributable in the subject assessment?

c. Is the subject property best categorized as: fully-serviced, partially-serviced, or no services?

d. Has the subject property been unjustly dealt with by the City over the past decade occasioning the need for an excessive number of appeals before the Board?

**Complainant's Requested Value:** $2,230,000

**Board's Decision:** For the reasons outlined herein, the Board varies the subject assessment from $3,490,000 down to **$2,440,000.**

## Position of the Parties

### Complainant's Position:

[4] The Complainant submitted that the current assessment of the subject property has increased significantly (by 72%) from the 2012 revised assessment of $2,030,000 dollars, despite there being no improvements or changes to the parcel whatsoever.

[5] The Complainant further submitted that the subject's original 2012 assessment of $3,870,000 dollars represented a 74% increase from the 2011 assessment of $2,230,000 dollars. In rebuttal, the Complainant also submitted a table outlining the assessment history of the subject property for the past nine years, noting that the property has been successfully appealed five times over that period, with a reduction from the Board each time.

[6] The Complainant provided a table of equity comparables (Exhibit C2, p.2) for all nine industrial properties in the subject's immediate vicinity, being the city blocks between 86th and 90th Avenue and between 60th and 66th Street in the city's South East region.

[7] The Complainant relied upon an analysis of this table to support the requested assessment, and noted that none of the ten properties on these blocks (including his own) have any water, sewer, or storm line services into their respective properties.

[8] The Complainant submitted that in 2004, a cost estimate determined it would require approximately $14,800,000 dollars to fully service the area (including water, storm and sewer trunk lines), and that a Local Improvement Bylaw was later drafted proposing a levy to be shared by all property owners in the affected area. The Complainant noted that in the end, every party backed away from the proposed project, except the subject property. He noted that a City representative indicated to him in 2004 that the project was too expensive to proceed with at that time, even for the City's portion.

[9] In verbal testimony, the Complainant took serious exception to the City's characterization of a photograph on pages 26 and 27 of Exhibit R1, wherein the Respondent questioned whether this photo depicted possible improvements to the subject site, namely the possibility of water services being installed on the subject parcel. In rebuttal, the Complainant provided an expanded view of the same "Google Maps" picture clearly identifying Calgary city crews at work pumping out water that had collected along to 90th Avenue SE, directly in front of the subject property.

[10] The Complainant also took exception to an email, dated March 1, 2012 and circulated between various city departments, wherein the subject line referenced the Complainant as a "New unhappy camper in "Section 23" (6220 90 Av SE)" (Exhibit C3, p.6). The Respondent reproduced a copy of this same email in his submission package (Exhibit R1, p. 28), describing the department's position on "partial services" to the subject property, but in the Respondent's copy the questionable subject line was altogether absent. Upon questioning, the Respondent could not account for why the subject line was missing from his copy.

[11] The Complainant noted that this same email was also included in the City's submission package in the 2012 appeal of the subject property, occasioning a stern comment from the Board at that time respecting the "unprofessional" and "dismissive" tone of the email (CARB 1380-2012-P, p.4).

[12] The Complainant objected to the repeated inclusion of this offensive email, and questioned why the subject line had been removed.

**Respondent's Position:**

[13] The Respondent argued that a 10% reduction for partial servicing had already been applied to the subject property in the current assessment, and he referred to the email noted in paragraph (par.) 10 above to clarify how various city departments define the term "partial services."

[14] The Respondent submitted the City's position that the Complainant has access to storm and sewer trunk lines running along 60th Avenue adjacent to the subject property, since those lines are in place and need only be run into the subject parcel. Therefore, the property is considered "partially serviced" (Exhibit R1, p.9).

[15] The Respondent noted that only a small portion of the water line runs along 60th Avenue in the vicinity of the subject parcel, but not any further down 60th Avenue (Exhibit R1, p.9).

[16] The Respondent argued that the allocated 10% reduction sufficiently adjusts for the partial servicing, and that no further reduction is warranted for the subject property.

[17] The Respondent submitted five equity comparables of industrial properties (Exhibit R1, pp.16-24), and four sales comparables of industrial properties which sold in the SE region of the city (Exhibit R1, p.30) in support of the current assessment.

[18] Upon questioning, the Respondent noted that in response to the Board's 2012 decision which held that the subject property has no "Excess Land" (CARB 1380-2012-P), the City re-classified the property as having "Additional Land."

**Board Findings:**

[19] With respect to the second issue raised by the Complainant, the Board finds that this property does not fit the definition of "Additional Land" – defined by the Assessment Department as: *"the difference between a sub-dividable property's actual parcel size and the typical parcel size that would be expected in order to accommodate the existing improvements"* (Exhibit R1, p.36).

[20] Evidence submitted by the Complainant established that the typical parcel size for industrial properties in the immediate area is approximately 5 acres. The subject property is 4.87 acres. Thus, according to this definition, the subject property does not have an "Additional Land" component, even if the Respondent had established that the parcel is sub-dividable, which he did not.

[21] Having last year been ordered by the Board to remove $1,591,669 from the subject's 2012 assessment after the Board found no "Excess Land" to exist on the property, the City erred in re-classifying this property to possess "Additional Land" – since the only difference between Excess and Additional is that the former is *"non-sub-dividable"* while the latter is *"sub-dividable."* The Board finds that the subject property possesses neither Excess nor Additional land, since its parcel size is in fact "typical" of that which *"would be expected in order to accommodate the existing improvements"*.

[22] The Respondent did not produce a value attributable to "Additional Land" in this year's assessment, so the Board is not able merely to remove that value from the current assessment. Given the classification error, however, the Board places little to no weight on the City's sales comparable data, particularly since all the City's comparables were for fully-serviced parcels which bear little resemblance in either functionality or market value to the subject's unserviced property.

[23] Therefore, the Board relies on the Complainant's equity comparables to support the reduced assessment (Exhibit C2, p2). In analyzing this data, the Board accepted the median figure in each of the dollar-per-square-foot columns (land and building), resulting in the following values: $13.73 per-square-foot (psf) for land, and $210.70 psf for buildings. Applying these to the subject property's land and building size results in values of: $2,915,620 and $3,602,970 respectively. In the interest of fairness and equity, the Board then averaged these two figures, producing a valuation for the subject property of: $3,259,295.

[24] With respect to the issue of services, the Board agrees with the conclusions of last year's Board when it noted as follows: *"... while on the face of it, the subject property may meet the definition of partial servicing by having access to storm and sewer lines; however, the Board is not convinced that the Complainant can easily access those services"* (Exhibit C2, p.18).

[25] Upon questioning, the Respondent testified that the subject property has been re-classified several times over the past number of years: as "fully-serviced" in 2009, "no services" in 2011, and now "partially-serviced" in 2013 – despite the Complainant's testimony that no material change has been made to the property over that time period.

[26] The evidence before the Board suggests that modifications to the existing water, sewer, and storm lines would need to be made, requiring a Local Improvement bylaw and the consent and financial support of all affected properties, as well as the City. The Complainant testified that as of December 31, 2012, no modifications have been made to the subject property or area, which leads the Board to conclude that the City erred in classifying the subject property as "partially-serviced" and that the correct designation should be "no services."

[27] As such, the Board finds that a 25% adjustment factor ought reasonably to be applied to the subject property, based upon a similar reduction given by the Assessment Department in 2012 for a property located in the immediate area of the subject parcel, which was then classified as having "no services" (Exhibit C2, p.18). Applying this 25% reduction to the assessment valuation noted in par. 23 above results in a final valuation for the subject property of: $2,444,472 (truncated down to $2,440,000).

[28] With respect to the final issue raised in the appeal, the Board finds that the Complainant has legitimate cause for some concern relative to the manner in which the City has dealt with the subject property over the past number of years – particularly given the fact that there has been no material change on the property in the past decade or so.

[29] With respect to both the Excess/Additional Land and the Servicing issues, the Board finds the City's repeated and numerous *re-classification* of categories on the subject property to be troubling, and onerous to the Complainant, occasioning the need for them to expend time, resources, and money in launching and defending successive appeals with successive reductions from the Board – to say nothing of the cost to taxpayers on the City's side.

[30] All taxpayers, including the Complainant, have a right to rely on the principles of fairness, equity, and natural justice underpinning the annual assessment valuation process. With this in mind, the Board finds the City's practice of arbitrarily re-classifying categories to support an increase in assessment year-to-year to be emphatically unacceptable – to the extend that this Board would consider all potential remedies available within its legislated framework, including awarding costs against the City, were such practices to arise in future appeals.

**Board's Decision:**

[31] For the reasons outlined herein, the Board varies the subject assessment from $3,490,000 dollars down to **$2,440,000**.

**DATED AT THE CITY OF CALGARY THIS** 7th **DAY OF** August **2013.**

**V. Higham, Presiding Officer**

## APPENDIX "A"

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

| NO. | ITEM |
|---|---|
| 1. C1 | Complainant's Disclosure |
| 2. C2 | Complainant's Disclosure |
| 2. R2 | Respondent's Disclosure |
| 3. C3 | Complainant's 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.*

**For Administrative Use Only**

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|---|---|---|---|---|
| CARB | Industrial | Single-Tenant, Multi-Building Warehouse | Equity Approach Market Value | "Additional" Land; Classification of Services; Excessive Appeals? |