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:

Sedock Holdings 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:

ROLL NUMBER:	**100012608**
LOCATION ADDRESS:	**820 59 Avenue SE Calgary, AB**
FILE NUMBER:	**70369**
ASSESSMENT:	**$5,410,000**

This complaint was heard on June 24 and 25, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- **Ms. Ruben Sekhon Director, Sedock Holdings, Ltd. (Self-represented)**
- **Mr. Daniel Sekhon Director, Sedock Holdings, Ltd. (Self-represented)**

Appeared on behalf of the Respondent:

- **Mr. Todd Luchak Assessor, City of Calgary**

Procedural or Jurisdictional Matters:

[1] The following preliminary matters were raised prior to the commencement of the merit portion of the hearing:

a. Was the City's submission package disclosed in a timely fashion pursuant to s.8 of the *Matters Relating to Assessment Complaints Regulation, AR310/2009 (the MRAC)?* If not, should the Board exclude the entire submission package of the City, pursuant to s. 9(2) of MRAC?

b. Should the Complainant be granted a requested three week postponement of the hearing pursuant to s. 15(1) of MRAC, in order properly to review the City's submissions and respond to them at the hearing?

c. Pursuant to s.295(1),(4) of the MGA, should the Board summarily dismiss the Complainant's appeal for their failure to submit an Assessment Request for Information (ARFI) form, as requested by the City?

d. In the alternative, pursuant to s.9(2) of MRAC, should the Board exclude all evidence relating to income approach valuations in the Complainant's submission package, since the Complainant failed to submit the requested ARFI?

Complainant's Position:

[2] With respect to the first preliminary issue, the Complainant highlighted a paragraph which appears to be copied from a Calgary Assessment Review Board brochure which reads as follows:

> "Parties may choose to disclose, to the ARB, four (4) hard copies of their evidence (colour, tabbed, with bindings) delivered to the ARB office no later than 4:30 p.m. on the disclosure deadline indicated on the Notice of Hearing."

[3] The Complainant stated that they received the City's submission package by fax at 9:18 p.m. on Monday, June 10, 2013 (the disclosure date), and since this was past the 4:30 p.m. deadline indicated on the above-referenced brochure, these submissions were not disclosed in a timely fashion.

[4] With respect to the second preliminary issue, the Complainant argued that since they believed the City's submission package to have been disclosed outside the required deadline, and thus also believed the entire package would be excluded, they did not prepare arguments to rebut the City's evidence package.

[5] With respect to the third and fourth preliminary issues, the Complainant argued that they never received an ARFI request, and were therefore under no obligation, under either s.295(1) of the MGA or s.9(2) of MRAC, to comply with the City's request.

[6] They further noted that the City had omitted to include the postal station on the ARFI request, and the letter was therefore undeliverable.

Respondent's Position:

[7] With respect to the first preliminary issued raised, the Respondent argued that since the City's submissions were received by the Complainant prior to midnight on the disclosure date, they were received within the legislated due date.

[8] With respect to the second preliminary issue, the Respondent opposed the requested postponement, noting that the City's disclosure package was faxed to the Complainant prior to midnight on the disclosure deadline date, and the Complainant's had received this package two full weeks prior to the hearing.

[9] With respect to the third and fourth preliminary issues raised, the Respondent noted that the City had sent an ARFI request to the Complainant with no return response. The Respondent further noted that the onus rests with the Complainant to ensure that a current and complete address remains on file in the Assessment department.

Board's Findings:

[10] With respect to the first preliminary issue, the Board finds that the City's submission package was disclosed in a timely fashion, having been received by the Complainant prior to midnight on the disclosure deadline date.

[11] With respect to the second preliminary issue, the Board finds that since the City submission package was disclosed in a timely fashion, the Complainant's requested three week postponement should properly be denied. In the interest of fairness and natural justice, however, the Board granted a brief postponement until 3:00 p.m. that afternoon (which was later put over until 9:00 a.m. the following morning (June 25, 2013) at which time the hearing reconvened.

[12] With respect to the third preliminary issue, the Board finds no grounds on which to summarily dismiss the Complainant's appeal, since the ARFI request was never received by the Complainant.

[13] With respect to the fourth preliminary issue, the Board denies the Respondent's request to exclude any portion of the Complainant's evidence package. The Board is satisfied that the Complainant never received the City's ARFI request since the address on the request was incorrectly noted – an error attributable to the assessment department since the Complainant's current and complete address was correctly noted on the subject Notice of Assessment sent out in January, 2013.

Property Description:

[14] The subject property is a multi-building, industrial warehouse site located at 820 – 59 Avenue in the South East region of Calgary. The 3.66 acre parcel is improved with two buildings on site: a 18,688 square foot (sf) single-tenant industrial warehouse built in 1999, and a 15,285 sf multi-tenant three-storey office building constructed in 2007. The land use designation on the property is I-G, with a sub-classification of IWS (Industrial with Single Tenant) and IWM (Industrial with Multiple Tenant) respectively.

Issues:

[15] The Complainant identified one issue on the Complaint Form as under appeal, that being the assessment amount. During the hearing and in their submission package, the Complainant confirmed the requested assessment value indicated on the complaint form, and raised one additional issue for the Board to consider. Thus, the issues under appeal are:

a. Is the current assessment amount of $5,410,000 dollars fair and equitable?

b. Does the subject property suffer from "extraordinary" deficiencies severe enough to distinguish the property as "atypical" with respect to the environmental hazards affecting the site?

Complainant's Requested Value: $3,195,500

Board's Decision: For the reasons outlined herein, the Board varies the subject assessment from $5,410,000 down to **$3,190,000.**

Position of the Parties

Complainant's Position:

[16] The Complainant submitted that the subject property is located adjacent to an old landfill site (the south-east corner of the property actually rests upon a portion of the landfill site), which produces methane gas emissions thereby requiring specialized methane gas extraction systems for both buildings on the property.

[17] The Complainant argued that this unique environmental hazard subjects the property to a host of limitations and deficiencies which materially reduce the marketability, rentability and saleability of this property, including the following:

a. No lending institution will provide a mortgage for the purchase of this property, owing to the high environmental risk. The Complainant obtained their mortgage on the property from the previous owner, Westinghouse Limited;

b. Dramatically higher insurance costs (Exhibit C2, Insurance Tab);

c. Chronic vacancy: the Complainant stated that they are obligated by ethical and liability issues to disclose to potential renters the environmental hazards on the site, and that as a result, the entire third floor of the office building has been vacant since construction of the building in 2007. Many potential renters either cannot take up the space (ie prospective food, health industry tenants) or choose not to accept the risk of leasing a space with such high environmental risk;

d. Limited (arguably no) developability of the remaining land on the parcel owing to the settling and instability issues occasioned by its proximity to the landfill;

e. Increased costs of having to bring in their own water and sewer services, since the City was unwilling to bring those services into the site due to ground shifting;

f. Limited paving options on the site and the road leading to it, owing to ground settling issues;

g. Warehouse is constructed from lower quality materials (metal, instead of concrete), with a shorter life-span and higher maintenance and utility costs than other similar-use, industrial structures;

h. Site and area drainage issues, owing to the instability of the ground in the entire proximate area; and

i. Only one single access/egress point into the property, owing to the instability of the ground.

[18] The Complainant stated that they have repeatedly asked the City to review the subject property with an on-site visit to discuss the relevant site deficiencies occasioned by their unique circumstances, which the Complainant's argued are not captured in the City's mass appraisal model, and which they alleged extend beyond the 30% typical environmental adjustment.

[19] The Complainant further noted that they were advised by the City to obtain a Phase II Environmental Impact Assessment Report, including cost-to-cure data, if the Complainant desired greater than the 30% environmental adjustment typically applied.

[20] The Complainant submitted an assessment history of the property over the past approximate decade, noting that between the years 2002 and 2006 their "property assessments were consistent by agreement with City assessors for several years, facilitated by open communication and cooperative exchange of information." (Exhibit C2, Tab 2 History, p.1)

[21] The Complainant submitted that more recently, however, they've had to appeal their assessment several times, noting successful reductions in every appeal, which they attribute to the fact that this property is unique and atypical.

[22] The Complainant also submitted that they were at one point advised by a past Assessment Review Board (ARB) to obtain an appraisal for future hearings, rather than relying on sales comparables, owing to the uniqueness of the property and its numerous deficiencies.

[23] The Complainant thus included an appraisal in their submissions, prepared by Altus Group Limited (with an effective date of July 1, 2012), which appraised the subject property on a leased-fee basis. The appraisal provided both Direct Sales Comparison and Income approaches to derive valuation amounts of: $5,000,000 and $4,565,000 dollars respectively, with an overall final estimation value of: $4,565,000.

[24] The Complainant then applied the 30% typical environmental adjustment to arrive at their requested assessment amount of: $3,195,500.

Respondents' Position:

[25] The Respondent did not dispute that the subject parcel suffers from numerous deficiencies occasioned by the environmental issues affecting the parcel, but argued that the 30% environmental adjustment applied by the city sufficiently addresses these concerns.

[26] The Respondent provided sales comparables for both multi-building properties in the Central and South-East (SE) regions of the city, as well as single-building properties solely in the SE region, asking the Board to place greater weight on the multi-building comparables, since they are more similar to the subject property and represent a truer reflection of value.

[27] The Respondent argued that the City has serious questions and concerns about the validity of the Complainant's appraisal for a number of reasons, including:

a. All the sales comparables in the appraisal are single-building properties, whereas the subject is a multi-building property;

b. All of the sales comparables in the appraisal are larger than the subject property, ranging in size from 23,600 to 50,000 sf, with an average building size of 35,823 sf, compared with the subject's 18,688 and 15,285 sf;

c. None of the sales comparables in the appraisal note the age of any property;

d. One of the Complainant's comparables was a non-arms-length transaction and should therefore be discounted;

e. None of the Complainant's rental-rate lease comparables disclosed any addresses for the properties used in the income approach analysis; and

f. The terms of reference for the Complainant's appraisal notes that the property is appraised on a leased-fee basis.

[28] With respect to this issue of a leased-fee interest, the Respondent referred the Board to a previous MGB decision (MGB 145/07), wherein that Board held that an assessment must reflect the full fee simple interest, combining both owner and all tenant interests in the property.

[29] In summation, the Respondent concluded that the City's direct sales comparables are better than the sales comparables listed in the Complainant's appraisal, since the City's comparables are more similar in size, location and characteristics to the subject property.

Board's Reasons for Decision:

[30] The Board carefully examined the direct sales comparables submitted by both the Complainant and the City and found weaknesses in each set of data.

[31] The Complainant's comparables were larger, single-building properties (similar in size to the subject property's two buildings combined), and lacking dates of construction. The Respondent also proffered evidence, which the Board accepts, indicating that one of the Complainant's comparables was a non-arms-length transaction. Accordingly, the Board has disregarded that sale in its examination of the Complainant's comparables.

[32] With respect to the City's data, two of the four multi-building comparables were outside the legislated valuation period (June 30, 2011 to July 1, 2012), and one of the remaining two valid sales was significantly older, built in 1980. Two of the City's five single-building comparables were similarly outside the valuation period.

[33] The Board notes that none of the City's five valid comparables (two multi and three single) provided any methodology for the time-adjustments applied to the sales, despite the Respondent relying on a time-adjusted per-square-foot (psf) value to justify the subject's psf rate in the subject assessment.

[34] Acknowledging the weaknesses identified in the valuation evidence of both parties, the Board places greater weight upon the Complainant's evidence, since the professional appraisal reflects a valuation generated by two separate methodologies (Direct Sales and Income), which are reasonably close in value ($5,000,000 and $4,565,000 respectively).

[35] The Board notes the concluding remarks of the appraisal, justifying the appraisal's use of the lower Income approach valuation ($4,565,000) as the final estimate of value: "The Income Approach produces a lower value estimate due to the existing vacancy in the building at 21% and the notice to vacate provided by the main floor tenant. If the building was fully occupied, the resulting value estimate is similar to the results of the Direct Comparison Approach." (Exhibit C2, Appraisal Tab, p.37)

[36] The Board accepts the above-noted conclusion, owing to the fact that vacancy has been an ongoing and long-standing issue on the property – and not merely a short-term aberration.

[37] With respect to the leased-fee objection raised by the Respondent, the Board notes that it is accepted practice for income-producing properties to be appraised on a leased-fee basis, since prospective purchasers want to understand the income-producing capabilities of the rents in place in the property at a specific point in time, relative to typical market rents.

[38] The Board notes that the Complainant owns a fee simple interest on the property's title and that the appraisal includes a land value component; and the Board accepts the Complainant's testimony that new leases were entered into in September 2012 which reflect the best market rental rates the property would bear. The Board is thus satisfied that the leasehold interest reflected in the subject appraisal is a reasonable reflection of market value for the subject property, in this particular case.

[39] With respect to the second issue under appeal, the Board concludes that based on the preponderance of evidence proffered by the Complainant, the subject property may legitimately suffer from extraordinary deficiencies and limitations extending beyond what might reasonably be described as "typical" environmental impact captured by the City's 30% environmental adjustment factor.

[40] In the interest of brevity, the Board will not repeat the litany of restrictions and limitations identified by the Complainant in paragraph 17(a) to (i) herein, but accepts that these site deficiencies occasioned by the adjacent landfill do materially reduce the marketability, rentability and potential saleability of this property in a manner that is not well captured by the City's algorithm model.

[41] In the absence of evidence from the Complainant, however, to guide the Board as to an alternate environmental adjustment factor, the Board accepts the 30% figure relied upon by both parties. Applying this factor to the final appraisal value noted in par. 35 above ($4,565,000) results in an adjusted assessed value of $3,195,500 (truncated down to $3,190,000).

[42] In passing, it appears self-evident to the Board that an on-site inspection by the City's assessment department, and periodic communication between the City and the Complainant relative to the subject parcel, would prove invaluable in assessing this kind of atypical property – which based on the Complainant's testimony, has generated mutually agreeable assessment valuations in the past.

Board's Decision:

[43] For the reasons outlined herein, the Board varies the subject assessment from $5,410,000 down to: **$3,190,000.**

DATED AT THE CITY OF CALGARY THIS 7 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

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Industrial	Multi-Tenant, Multi-Building Warehouse	Direct Sales and Income Approach to Market Value	Does property suffer from "extraordinary" environmental deficiencies?