



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:

518862 Alberta Limited (as represented by Wernick Omura Real Estate Advisory Services), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
A. Wong, BOARD MEMBER
R. Cochrane, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	048502504
LOCATION ADDRESS:	16 – 1916B – 30 AV NE
FILE NUMBER:	70534
ASSESSMENT:	\$637,500

This complaint was heard on 2nd day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *B. Boccaccio* - Wernick Omura Real Estate Advisory Services

Appeared on behalf of the Respondent:

- *B. Brockelbank* - Assessor, City of Calgary

REGARDING BREVITY:

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None

Property Description:

[3] The subject is one single "bay" in a thirty-three year old (1979 construction) industrial condominium property zoned I-G (Industrial General) in the South Airways Industrial area. The property is composed of 2,753 square feet (SF) of warehousing space, and 924 SF of ground floor finished office space, for a total assessable area of 3,677 SF. The property does not have, and is not being assessed for any useable finished mezzanine space. The subject is assessed at \$174 per SF for a total assessed value of \$637,500.

Issues:

[4] Given that the subject sold on July 4, 2012, what is its correct value for assessment purposes?

Complainant's Requested Value:

[5] The Complainant requests an alternate value range of \$490,000 to \$500,000 - based firstly on the sale of the subject in 2012, and, secondly the value of comparable property sales.

Board's Decision:

[6] The Board confirmed the assessment at \$637,500

Legislative Authority, Requirements and Considerations:

[7] Under the ***Municipal Government Act*** (MGA), the Board cannot alter an assessment which is fair and equitable.

[8] MGA 467 (3) states:

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,

(b) the procedures set out in the regulations; and

(c) the assessments of similar property or businesses in the same municipality."

[9] The Board examines the assessment in light of the information used by the assessor and the additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the Board that the assessment is not fair and equitable. The Board reviews the evidence on a balance of probabilities. If the original assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the Board will not alter the assessment. Within each case the Board may examine different legislative and related factors, depending on what the Complainant raises as concerns.

Positions of the Parties**(a) Complainant's Position:**

[10] The Complainant presented that the subject was purchased as a vacant and partly finished industrial condominium unit on July 4, 2012 for \$490,000. He noted that the purchase price was \$147,500 less than the 2012 assessed value as calculated by the Respondent. He clarified that the subject has a 20 foot ceiling in the largely unfinished warehouse area which is currently only used for the storage of vehicles and parts. He noted that the finished front office, and the upstairs unfinished mezzanine spaces, have 9 foot ceiling heights. He advised that the owner plans to operate a fully-functioning automobile service facility on the premises once the owner has secured a zoning bylaw amendment to allow it.

[11] The Complainant argued that based on his research of market sales, the finished office and unfinished mezzanine space in the subject should be assessed at \$141 per SF and not \$174 per SF. However, the Respondent clarified during questioning of the Complainant that the office and mezzanine space in the subject has not been assessed at all – only the warehouse space.

[12] The Complainant provided several documents related to the purchase of the subject by the current owner on July 4, 2012. He noted that the City of Calgary concurs that this is an "Arms Length" sale, however, they disagree that it was advertised "on the open market" in accordance with accepted assessment and appraisal practice. The Complainant argued that while the subject was not listed on the generally-accepted Multiple Listing System (MLS), it was "listed" in February 2011 by CBRE Richard Ellis

as a "pocket listing" for eighteen months. Consequently it was generally exposed to the market for eighteen months and therefore open to the public for "offers" through their exclusive electronic marketing system. He argued that the CBRE system is as valid a form of "listing" as the MLS system and therefore the sale of the subject should be considered a valid sale for assessment purposes.

[13] In his rebuttal document C-2 the Complainant provided a two-page CBRE marketing sheet identifying various site attributes of the subject, as well as information which appeared to confirm the date of the offering at 2011. However, in response to questions from the Respondent, he was unable to provide a copy of the CBRE "Listing" agreement. Subsequently the Complainant provided a copy of two e-mails dated June 14, 2013 from the owner of the subject to himself which confirmed that the eventual sale of the subject on July 4, 2012 for \$490,000 was a "private purchase" in which CBRE was not involved. He provided the "Alberta Land Titles Land Transfer" and "Affidavit of Value" documents confirming the value considerations related to the sale.

[14] The Complainant provided a matrix containing the details of nine separate market sale transactions, including the subject, eight of which he considered comparable to the subject. He also provided the Commercial Edge data sheets describing the characteristics of the properties, and the financial details related to each transaction. The Complainant identified in the matrix that the owner sold Unit 15 in the complex on November 3, 2011 and purchased the subject Unit 16 on April 7, 2012. He suggested therefore that the owner has a certain history and knowledge of the valuation of units in the complex.

[15] The Complainant clarified that as the Agent for the owner, he had time-adjusted the nine market sales at a positive 1% per month. Therefore he argued, on the basis of his analysis of these adjusted sales, he considered that the subject could be assessed at \$500,000 based on \$141 per SF. He also asserted that when one also considers the sale of the subject in June 2012 at \$490,000, this indicates that a range of values between \$500,000 and \$490,000 is reasonable. Therefore he suggested that the assessment should be reduced to \$500,000. The Complainant also questioned the time-adjustment factor used by the City in its analysis of the market.

(b) Respondent's Position:

[15] The Respondent argued that for assessment purposes, the sale of the subject in June 2012 – a private unbrokered sale between two unrelated parties, does not meet the generally-accepted industry criteria to qualify it as a valid market sale. He argued that the property was not listed for a period of time on the open market immediately prior to the sale transacting. He advised that he had personally contacted CBRE Richard Ellis to confirm whether or not it "brokered" the sale, and he was assured by CBRE representatives that they had not. In addition, he was unable to ascertain whether any other formal listing of the property had occurred prior to its June 2012 sale. Therefore, he clarified, the City did not use this sale in its broader analysis of the market.

[16] The Respondent concurred with the Complainant that the sale of the subject as presented by the latter, appeared to be an arm's length sale. However, he argued that one sale on its own, is not representative of the broader market (i.e. one sale does not make the market). He argued that the buyer and seller were neighbours (i.e. units #15 and #16) and therefore would have had prior knowledge of the properties. Moreover, given that the subject did not appear to have been listed on the open market, the City is unable to accept the sale in accordance with established assessment principles.

[17] The Respondent provided a copy of the City's "Non-Residential Property Sale Questionnaire" which had been completed by the owner of the subject in September 2012 and forwarded to the City. He noted that in response to question #3 on the form - *"Was the property listed through a real estate broker?"* the owner had written "unknown". The Respondent argued that this written response appeared to confirm certain doubts that the subject had been listed at the time of sale, and therefore reinforced the City's reluctance to rely on its value for assessment purposes. He also questioned the Complainant's use of the term "pocket listing" and its relevance to the sale of the subject.

[18] The Respondent provided a matrix containing five of the Complainant's eight sales. He argued on the basis of certain individual site characteristics, that they were not comparable to the subject because they are located in different industrial market zones having different, and in many cases, lesser values than the subject. He provided an additional matrix containing all eight of the Complainant's sales, in which he provided the assessed values of each of the properties. He argued that the range of assessed values from \$137 per SF to \$188 per SF demonstrates that the subject, in Market zone "South Airways 3" (SA3) is fairly and equitably assessed. He noted the subject is assessed at \$173 per SF and four comparables used by the Complainant from SA3 for example, are assessed at values ranging from \$166 per SF to \$188 per SF, and this also supports the assessment.

[19] The Respondent provided a third matrix containing seven market sales he had selected from the north-east region of Calgary – all possessing ground floor sizes with finished and total assessable areas similar to the subject. He noted the per square foot assessed values ranged from \$169 per SF to \$216 per SF. He argued that the subject fits well within this range at \$173 per SF, and this supports the assessment.

[20] The Respondent provided a fourth matrix containing the assessments of seven industrial condominium property units – all from northeast Calgary and all from the SA3 market zone like the subject. He noted the assessments ranged from \$175 per SF to \$202 per SF. He argued that the subject – assessed at \$173 per SF fits well within this range of assessment values.

[21] The Respondent presented copies of Municipal Government Board Orders MGB 046/10 and DL 132/08. He referenced the following from MGB 046/10 as follows:

"The Respondent relied upon the Glenmac sale in its analysis of comparable properties. It is clear from the Affidavit that the Glenmac sale is not a reliable indicator of market value. Evidence of a sale must meet the definition of market value as set out in section 1(1)(n) of the Act which states that 'market value' means the amount that a property, as defined (in) section 284(1)(r) might be expected to realize if sold on the open market by a willing seller to a willing buyer..."

"In MGB decision DL 132/08, the MGB determined that for a sale to represent market value, it is imperative that the sale be tested through competition in the 'open market'. The MGB defined 'open market' in accordance with the Property Appraisal and Assessment Administration textbook produced by the International Association of Assessing Officers (1990) which defines 'open market' as '[a] freely competitive market in which any buyer and seller may trade and in which prices are determined by competition'."

"In DL 132/08 the property was not listed for sale on MLS, nor advertised in any way nor made known to other prospective buyers. The MGB specifically noted the difference between an 'arms length' sale between non-related parties and an open market sale. The MGB held that a sale that is not tested in the open market is not indicative of market value, even if it is an arm's length sale."

[22] The Respondent argued that the foregoing from the two MGB decisions, supports his argument that the sale of the subject as presented by the Complainant is not considered to be a valid sale for assessment purposes. The Respondent requested that the assessment be confirmed at \$637,500.

Board's Reasons for Decision:

[23] The Board finds that Municipal Government Board Orders MGB 046/10 and DL 132/08 and the findings therein as outlined in [21] above, are relevant to the issue in this hearing.

[24] The Board finds on the basis of the evidence presented in this hearing, and pursuant to the principles outlined in [21] and [23] above, that at the time of sale, the subject was not listed on MLS or otherwise available on the open market and is therefore not indicative of market value for assessment purposes pursuant to the Municipal Government Act.

[25] The Board finds that it accepts the Respondent's arguments with regard to the unreliability of the sale of the subject as an indicator of value for the subject because it was not advertised on the open market at the time of sale.

[26] The Board finds that the definition of a "pocket listing" as identified and advocated by the Complainant as a valid listing technique, is unclear, undocumented, and ill-defined, and not generally-accepted terminology for assessment purposes.

[27] The Board finds that it was presented with no written documentary evidence confirming the subject was listed at any time prior to its sale in July, 2012. The Complainant relies primarily on the unlisted sale of the subject as a valid indicator of value for the subject in this hearing.

[28] The Board finds that the Respondent's several matrices of valid market sales support the assessment because they are primarily sales occurring in the same or similar market zone(s) as the subject, whereas the Complainant's are not.

[29] The Board finds that the Respondent's matrices of assessment equity comparables, which are all from the same market zone as the subject, demonstrate that the subject is assessed fairly and equitably with nearby similar properties.

[30] The Board finds that the Complainant provided insufficient information to demonstrate that the assessment is either incorrect or inequitable.

DATED AT THE CITY OF CALGARY THIS 31 DAY OF July 2013.



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 - Rebuttal
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.*

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Industrial condominium	Single bay condo	Assessed and market value	Open market sale "definition"