

**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:

Rona Revy Inc. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Ivan Weleschuk, PRESIDING OFFICER
Arlene Blake, MEMBER
James Pratt, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

Roll Number:	074004300
Property Location:	2015 60 Street SE
Hearing Number:	68273
2012 Assessment:	\$32,650,000

This complaint was heard on June 12 and June 14, 2012 at the office of the Assessment Review Board located at Floor Number Four 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- Mr. David Mewha
- Mr. Matthew Robinson

Appeared on behalf of the Respondent:

- Mr. Ian McDermott
- Mr. Jason Lepine

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

The Complainant raised a procedural issue related to Sections 299 and 300 of the Municipal Government Act (MGA).

299(1) *An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment for that person's property.*

- (1.1) *For the purposes of subsection (1), "sufficient information" in respect of a person's property must include*
- (a) *All documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,*
 - (b) *The key factors, components and variable of the valuation model applied in preparing the assessment of the property, and*
 - (c) *Any other information prescribed or otherwise described in the regulations.*
- (2) *The municipality must, in accordance with the regulations comply with a request under subsection (1).*

300(1) *An assessed person may ask the municipality, in the manner prescribed by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.*

- (1.1) *For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:*
- (a) *A description of the parcel of land and any improvements, to identify the type and use of the property;*
 - (b) *The size of the parcel of land;*
 - (c) *The age and size or measurement of any improvements;*
 - (d) *The key factors, components, and variables of the valuation model applied in preparing the assessment of the property;*
 - (e) *Any other information prescribed or otherwise described in the regulations.*

- (2) *The municipality must, in accordance with the regulations comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.*

The parties agreed that the evidentiary packages were otherwise properly disclosed in accordance with Section 8 of Matters Relating to Assessment Complaints Regulations (MRAC).

To better describe the issue, the Complainant requested that both his evidentiary package and the response from the City be entered as evidence, so that specific documents could be referred to. The Respondent did not have any objections to the two documents being marked at this time, and so both the Complainant's evidence (C1) and Respondent's disclosure (R1) were marked as exhibits.

The Complainant described the effort made to request information from the City, making reference to material presented in Exhibit C1 and identified the information that was provided in response to that request, and what information apparently was not provided but then included in the Respondent's disclosure (Exhibit R1). As a result, the Complainant had two portions of the Respondent's disclosure (Exhibit R1) that he wished to exclude from evidence before this hearing.

The Complainant requested details of the factors used in the sales comparison approach used by the City in preparing the assessment. The City provided page 225 of Exhibit C1, entitled "Assessment Range of Key Factors, Components and Variables – 2012 Industrial". After some discussion, the Complainant was satisfied that this page contained all the factors considered in the City's assessment model. The Complainant dropped his objection on the understanding that this page included all the factors.

The Complainant requested the "five most comparable sales transactions used to determine the subject assessment" (page 207, Exhibit C1). The Complainant received a list of all the industrial properties in the City's database used for the 2012 assessment. The Complainant noted that on page 18 of R1, the Respondent provided a list of the five most comparable sales, but did not provide this list when requested earlier. The Respondent commented that a mass appraisal model is used with a number of variables that are adjusted in the model based on the characteristics of the property being assessed. The assessment is not done using a specific subset of sales deemed most comparable. The list of industrial sales provided by the City includes all the data that is used to either derive coefficients, or other factors specific to the model. The Respondent noted that the list of comparable properties presented on page 18 of R1 were taken from the list provided the Complainant, and that it just so happened that five comparables were presented in response to the complaint. In preparing the response to the complaint, the Respondent could have selected any number of comparable properties to defend their assessment. After some discussion, the Complainant withdrew this specific objection.

With regard to the request by the Complainant for factors used in an income approach, the Respondent stated that they did not use an income approach to value industrial properties in the 2012 assessment year, so did not have any factors used for such a calculation.

After further discussion, the Complainant withdrew his objections related to the evidence package disclosed by the Respondent (R1), but wanted the record to note that it was the Complainant's opinion that the information requested should have been provided in a more timely fashion and in a format that indicated what material was being provided for each specific request. The Complainant pointed out that they made a written request as required by the municipality and also had a meeting on this matter with the City, with both activities frustrating to the Complainant. The Complainant also reserved the right to object to certain evidence being entered by the Respondent if it appeared that that information was part of the information requested but not provided. That said, the Complainant stated that they were not abandoning their request to the Minister for a compliance review of this issue.

The Board understands that a request for a Ministerial Review has been requested, but this matter is outside the jurisdiction of the Board and will not influence the Board or its decision on merit. The hearing then proceeded with a consideration of the merits of the complaint.

Property Description:

The subject is located in the Forest Lawn Industrial District of the southeast quadrant of the City. It consists of a warehouse with extended office space, with a footprint of 317,459 ft², an assessable area of 330,344 ft², on 31.99 acres of land. This is an owner occupied property, used as a large distribution warehouse operation.

The property is assessed using a sales comparison approach, whereby the building is assessed on a per square foot of assessable area, including associated land of about 24.293 acres representing 30% site coverage. The surplus land, some 7.697 acres, is assessed at the vacant land rate of \$525,000/acre.

Issues:

The Complainant raised the following two issues, as the basis for the complaint:

- 1. Is the subject property correctly assessed using the sales comparison approach?**
- 2. Is the subject property equitably assessed compared to similar properties?**

Both parties stated that the assessment of the 7.70 acres of surplus land component of the subject assessment at a rate of \$525,000/acre was not at issue.

Complainant's Requested Value:

\$27,290,000

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

Before considering the evidence, the Board notes that the size of the subject property is expressed slightly differently on different documents, apparently due to how the number is rounded. For the purpose of this decision, the subject property will be taken as 31.99 acres, using two decimal places. The size of the surplus land area is 7.70 acres (calculated based on the assessment being \$4,041,002 as agreed to by the parties, divided by the rate of \$525,000/acre to yield 7.697 acres, rounded to 7.70 acres). The area included with the building to reflect 30% site coverage is therefore 24.29 acres, supported by the calculation:

$$317,459 \text{ ft}^2 \times (100/30) = 1,058,0917 \text{ ft}^2 \div 43,560 \text{ ft}^2/\text{ac} = 24.29 \text{ acres}$$

Therefore, the area in the subject property is:

$$24.29 \text{ acres} + 7.70 \text{ acres} = 31.99 \text{ acres}$$

1. Is the subject property correctly assessed using the sales comparison approach?

The discussion on this issue is related to the subject building and the 24.29 acres of land on which the building sits on, reflecting a 30% site coverage. The 7.70 acres of surplus land and its assessment at \$525,000/acre for a total of \$4,041,002 is not in dispute.

A. Complainant's Evidence

The Complainant was of the opinion that the assessed value did not reflect market value of the property. Specifically, the subject was a very large warehouse in an area where such properties were not common. There were very few sales of large warehouse properties similar to the subject, therefore there was little basis for a sales comparison approach. Furthermore, if the subject property was sold, it would sell into the investment market, and its price would be derived based on the expected revenue that it could generate. Therefore the income approach was the best indicator of "market value".

The Complainant's base position was that one need only consider the rent being generated by a property as a factor of comparison, as rent represents all the characteristics that affect the value of that building, including size, age, condition, location, etc. Rents and the value of a property move in "tandem" with one another. As rents increase, value increases, and vice versa.

The Complainant presented a sales comparison approach using five sales (page 18, Exhibit C1), four of which were of much smaller properties than the subject. The sale prices of these comparables were adjusted based on the assumption that the rent for the subject property would be \$5.50/ft². Based on this approach, the Complainant concluded that the rate per square foot for the subject property should be \$70, not the \$86.61/ft² used by the City.

The Complainant stated that the market for a property such as the subject would be as an investment property. Sales of similar warehouse properties, albeit smaller in size, were driven by the income that could be generated by each respective property, therefore the income approach was a more appropriate methodology to indicate the market value of the subject. Six leasing comparables were presented (page 19, Exhibit C1) that indicated that the average lease rate for warehouse buildings in the southeast quadrant of Calgary was \$5.54/ft². The Complainant suggested that using a rental rate of \$5.50/ft² for the subject, much larger building, was a conservative assumption, as typically the larger the space, the less is the per square foot rent.

The Complainant then presented a capitalization rate study using four of the sales comparison comparable properties (pages 38-39, Exhibit C1), that indicated an average capitalization rate of 7.34%, rounded to 7.5%. These properties were apparently fully leased. A vacancy rate of 4% was adopted after a review of industry publications (page 36-37, Exhibit C1) and used in the income approach calculation.

B. Respondent's Evidence

The Respondent's position was that the sales comparison approach is the best approach to use in determining the market value of a property for assessment purposes. They agreed that there were few sales of industrial warehouses similar in size to the subject, but indicated that the assessment model used by the City to prepare an assessment value for a property includes a number of factors and adjustment coefficients, including size, location, year of construction, etc.

The Respondent then challenged the Complainant's assertion that rent reflects all factors, and only those factors that influence the price or market value of a property. Specifically, the Respondent argued that factors such as management of the building, level of maintenance, leasehold improvements, and other considerations influenced rental rates. Therefore, rental rates reflected more than just the characteristics of a property that influence market value.

The Respondent presented five sales comparables (page 18, Exhibit R1) which showed that an assessment of \$84/ft² reflected the market value for similar properties. Three of these five comparables were also used by the Complainant as sales comparables.

C. Board's Conclusions on Each Issue

In considering the issue before the Board, the "test" is defined in the Municipal Government Act, and specifically Matters Relating to Assessment and Taxation Regulation (MRAT).

- 4(1) The valuation standard for a parcel of land is**
(a) market value,

The Board accepts the assertion that rents achieved by a property and the value of a property move "in tandem", however it was not demonstrated that this is a strong, definitive and immediate one-to-one relationship.

Both parties acknowledged the lack of recent sales of large (150,000+ ft²) warehouses. The Board notes that this paucity of sales data affects both the sales comparison and cost approaches. The Board therefore will consider the two approaches and which was the more reliable.

The Board notes that the Complainant presented a sales approach that used five sales, four of which were much smaller than the subject. The analysis as presented, forces the sale prices to reflect the value of the property if the rents were \$5.50/ft². This adjustment ignores the characteristics of the respective properties. The quantum of the adjustments is not supported by even a qualitative consideration of relative factors such as age, size, location, % finish, etc. Such an analysis would have demonstrated that the adjustments were applied in a consistent and logical manner.

Both parties presented excerpts from appraisal texts and a number of previous Board decisions which discuss methodology, and specifically how an income approach is properly done. The Board is of the opinion that there are variants as to how an income approach is to be done properly, but that the important point is that the analysis must use consistent data. In other words, if the analysis is done using actual data, all the variables must reflect the actual data. If the analysis is done using "market" or "typical" data, then all the variables must reflect "market" or "typical" rates. It is not appropriate to mix data.

The Complainant presented:

- rental rates based on six comparables and concluded that the "market rent" for the subject property was \$5.50/ft².
- a vacancy rate of 4% based on a review of industry sources.
- a capitalization rate based on four comparable sales (different from those comparable sales used to develop the rental rate) to derive a rate of 7.5%.

While the methodology used appears to be a consistent use of "market" or "typical" rates, the Board notes the very limited base upon which these "market" rates were derived. The Board also notes the use of a vacancy rate that was taken from a number of industry surveys, not derived from actual market data, and which introduces a wrinkle of inconsistency in the analysis.

Both parties agreed that the best comparable property is 4100 Westwinds Dr. NE. The table below compares this property to the subject.

Characteristic	4100 Westwinds Dr. NE	Subject (2015 60 St. SE)
Building size (ft ²)	302,135	303,344
Property Size (ac)	15.84	24.29 (7.7 ac surplus)
Year of Construction	2000	2003
Finish (%)	3.00	4.00
Site Coverage (%)	44	Assumes 30%
Bays	1	1
Occupants	1	Owner occupant
Sale Date/Assessment Date	August 2009	July 2011
Sale Price	\$24,858,000	
Sale Price/SFB / Assessment/SFB	\$85.48	\$86.61
Rent per ft ²	\$6.65	

The Complainant indicated that no time adjustment is required. The Respondent indicated that the City applied a -3% per year time adjustment in its assessment model. Both parties agreed that industrial properties in the northeast tend to sell at a premium over similar industrial properties located in the southeast quadrant of Calgary. The Complainant presented the City's 2012 Industrial Land Values table (page 5, Exhibit C2) to support this contention.

The Board concurs that the property located at 4100 Westwinds Dr NE is the best indicator of the market value of the subject, and that it and other comparable sales presented by the Respondent support a market value of \$84/ft² for the building and associated land (24.29 acres). The Board also acknowledges that the evidence before it indicates that properties located in the northeast quadrant of the City sell at a premium over similar properties in the southeast industrial area of the City. That said, the Board notes that both parties agreed that the subject location is somewhat unique, in that it is not located in a large industrial district in southeast Calgary. The Board also notes that both the 4100 Westwind Dr NE and subject properties have good access to major roadways, and easy access to either Deerfoot Trail or Stoney Trail (whereas, access for truck traffic out of most of the southeast industrial areas is not as direct or easy).

The Board does not question the methodology used in the income approach per se, but notes the challenge in applying an income approach to an owner-occupied property. In considering the income approach presented, the Board is not persuaded that the six comparable properties used to derive the market rent reflect the real value of the market rent for the subject. At the very least, the Board is of the opinion that the market rent for the subject should be more than that the \$5.50/ft² on average being obtained in southeast industrial areas, as the subject is somewhat superior due to location and access to major roadways. (The Board notes that if the income approach as presented by the Complanant is done using a rental rate in the order of \$6.50/ft², similar to the rent for 4100 Westwind Dr. NE, the resulting value is very similar to the assessed value.) The Board understands the adjustments made by the Complainant in deriving the capitalization rates, but notes that this analysis required substantial quantum adjustments. In total, the Board is not comfortable with all the adjustments that were required in deriving the factors used in the income approach, nor was the Board convinced that these factors reflect the specific and unique characteristics of the subject property.

While the Respondent did not present its model or data in detail, they did discuss the dynamics of the model, which are based on a number of property characteristics.

After considering the evidence, the Board considers the sale of the 4100 Westwind Dr. NE property as the best indication of the value of the subject (building and 24.29 acres of land representing 30% site coverage). This sale supports the assessed value of the property. The Board is not convinced by the Complainant's presentation that the assessed value does not reflect the market value of the subject. The market value of the surplus land, at \$4,041,002 was not an issue. Therefore, the Board concludes that the assessed value of \$32,650,000 is correct.

2. Is the subject property equitably assessed compared to similar properties?

The discussion on equity involves the total assessed value, therefore the influence of the 7.70 acres of surplus land is included in this discussion.

A. Complainant's Evidence

The Complainant presented a table of nine equity comparables (page 111, Exhibit C1) comparing the assessed rate per square foot of building. The Complainant argued that the subject was most comparable to properties in this table that were assessed at the lower end of the range, and that the most comparable of these nine properties was the 25 Dufferin PI SE property that had an assessed value of \$63/ft². The subject was assessed at a rate of \$99/ft² which demonstrates that the assessment is not equitable.

B. Respondent's Evidence

The Respondent presented six equity comparables (page 20, Exhibit R1). Only the 4100 Westwind Dr. NE property was used by both the Respondent and Complainant as an equity comparable. The Respondent commented that their comparables show a range of value both on a per square foot of building basis and as a total assessment. The Respondent argued that their equity comparables demonstrate that the subject fits into the indicated range (on a per square foot or total assessment basis), when its characteristics are considered and compared with the six equity comparables.

C. Board's Conclusion on this Issue

The comparables presented by both parties encompass a wide range of property characteristics. Neither party did a good job of comparing the subject to the equity comparables they presented, save for maybe one or two of the comparables. The Board notes that the Complainant used the assessed value of the subject property, which results in an assessed rate of \$99/ft² when the surplus land is included, as the base to compare the subject to the comparables. The Respondent considered both the assessment with and without the surplus land in their discussion.

The Board understands that all the equity comparables were assessed using the sales comparison approach, as calculated using the City's assessment model for these types of properties. Both parties selected a subset of all the properties in this assessment class, to offer as comparables, and in total fourteen different equity comparables were presented between the two parties.

The Board notes that the subject's total assessment and the rate per square foot of building falls within the range of values presented. Based on the equity evidence, the Board concludes that the subject assessment is equitable.

Board's Decision

Based on the evidence presented related to the market value, the Board concludes that the assessed value reflects market value. After considering the equity evidence, the assessed value is within the range of values represented by the equity comparables presented. The Board concludes that the assessment is correct and equitable, and confirms the assessed value of \$32,650,000

DATED AT THE CITY OF CALGARY THIS 25 DAY OF June 2012.



Ivan Weleschuk
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant 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.*