

**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:

**Westpen Properties Ltd. c/o Bentall Kennedy (Canada) LP
(as represented by Altus Group Ltd.), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
B. Bickford, MEMBER
R. Kodak, MEMBER***

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

ROLL NUMBER:	095000204
LOCATION ADDRESS:	4800 52 Street SE
HEARING NUMBER:	67779
ASSESSMENT:	\$29,800,000

The complaint was heard on July 03, 2012, in Boardroom 3 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- J. Smiley; M. Robinson

Appeared on behalf of the Respondent:

- I. McDermott

Board's Decision in Respect of Procedural or Jurisdictional Matters

[1] There were no procedural or jurisdictional matters raised by either party during the course of the hearing.

Property Description

[2] The subject property is an 18.039 acre parcel of land, improved with two, multi-tenanted industrial warehouses 304,719 sq.ft. (square feet) in footprint size, resulting in a site coverage (building : land ratio) of 38.78%. The improvements have the following attributes:

Improvement Footprint	Assessable Improvement Area	Year Built	Finish %	Assessment	Assessment per Sq.Ft.
157,692	157,692	1999	14%	\$ 14,197,870	\$ 90.04
<u>147,027</u>	<u>171,274</u>	2000	35%	<u>\$ 15,607,987</u>	\$ 91.13
304,719	328,966			\$ 29,805,857	\$ 90.60

Issues

[3] The Complainant raised the following matters in section 4 of the complaint forms:

3. an assessment
4. an assessment class

[4] However, at the hearing the Complainant withdrew matter 4 and led evidence and argument only in relation to matter 3, an assessment amount. The Complainant set out 15 grounds for the complaint in section 5 of the complaint form with a requested assessment value of \$26,310,000; however, only the following issue was in dispute at the hearing:

- Is the assessment of the subject property equitable in relation to the assessments of properties of similar size, utility and functionality?

An issue related to the assessable building area was withdrawn by the Complainant during the course of the hearing, resulting in the revised requested assessment set out below.

Complainant's Requested Assessment

The Complainant requested an assessment of \$26,350,000, revised during the course of the hearing to \$26,970,000.

[5] The Complainant argued that the subject is inequitably assessed in relation to typical industrial warehouses with higher site coverage ratios, as the subject's 38.78% site coverage offers no additional utility as a result of the shape of the subject parcel, the configuration of the improvements on the site, and the required setback from 52nd Street. In support of the argument, the Complainant provided a computer generated estimate indicating that of the subject's total parcel size of approximately 785,750 sq.ft., only 687,500 sq.ft.+/- is available for development as a result of the site characteristics identified above, reflecting an effective site coverage ratio of approximately 44%.

[6] The Complainant further argued that the subject's multi-building characteristic has not been adequately discounted, as the subject's rate of assessment is significantly higher than that of comparable industrial warehouses of similar total size, which would lease at similar net rent rates. In support of the argument, the Complainant provided the Board with a summary of the physical attributes and assessments of thirteen, multi-tenanted industrial warehouse properties located in the southeast region of the municipality. The improvements, constructed between 1990 and 2009, range in size from 159,686 to 653,905 sq.ft. and exhibit site coverage ratios ranging from 36% to 55%. The sample of properties includes both single building and multi-building properties, and the extent of interior development (finish) ranges from 2% to 22% of the total building areas. The assessments range from \$13,280,000 to \$46,800,000, and equate to a range from \$62 to \$91 per sq.ft. of improvement area, with an indicated median assessment rate of \$82 per sq.ft.

[7] The Complainant argued that the median assessment rate of \$82 per sq.ft. reflects the typical assessed value of large industrial warehouse properties and therefore represents an equitable assessment rate for the subject property. The Complainant submitted that the property located at 4841 47 Street SE and assessed at the rate of \$82 per sq.ft. is the most comparable property to the subject as it is in a similar neighbourhood. Moreover, although it is smaller than the subject which would suggest a higher value per sq.ft., it includes a lower proportion of interior finish area which would suggest a lower value per sq.ft., resulting in an overall equivalent value on a per sq.ft. basis.

[8] The Respondent argued that the Complainant is not entitled to put forward an "equity" argument in the absence of first establishing the subject's market value with market evidence. The Respondent submitted that this prerequisite has been clearly established in the matters of *Bramalea Ltd. v. British Columbia (Assessor for Area 9 (Vancouver))* (B.C.C.A.), [1990] B.C.J. No.2730, and *Bentall Retail Services et al v. Assessor of Area #09 – Vancouver*, 2006 BCSC 424, and provided the Board with a two page document entitled, "Bramalea and Bentall Decision Overview", setting out the Respondent's position in detail.

[9] The Respondent argued that the subject property is equitably assessed in relation to the assessments of similar properties, which are all assessed on the basis of the actual size of the parcel despite any configuration and setback characteristics. With respect to the multi-building characteristic of the subject property, the Respondent argued that the multi-building coefficient adequately adjusts for this negative characteristic in the direct sales comparison assessment model. The Respondent further argued that multi-building properties cost more to construct than single building properties of similar total size, therefore they would exhibit a higher per sq.ft. rate of market value. In response to an inquiry from the Board as to the specific amount of the multi-building adjustment, the Respondent submitted that section 27.3 of *Matters Relating to Assessment and Taxation Regulation, AR 220/2004*, prohibits the Respondent from disclosing the specific co-efficient to the Board.

[10] In response to the Complainant's equity comparables, the Respondent argued that the subject property is superior to the Complainant's sample of industrial properties, and the subject's overall assessment rate of \$90.60 properly reflects the value of the subject's superior attributes. In support of the argument the Respondent provided a comparison of the median measure of the sample attributes to the corresponding attributes of the subject property, as detailed below:

	Assessable Improvement Area	Year Built	Interior Finish %	Site Coverage	Assessment Rate per Sq.Ft.
Median of Sample	182,332 sq.ft.	1998	6.24%	51.14%	\$ 82.00
Subject	157,692 sq.ft.	1999	14.41%	38.78%	\$ 90.00
	171,274 sq.ft.	2000	35.05%	38.78%	\$ 91.00

[11] The Respondent submitted that the subject improvements are slightly smaller and newer, contain a significantly higher proportion of interior finish area, and include significantly more land (per sq.ft. of building) than is evident in the median of the comparables; all of which would demonstrate that the subject improvements should be valued at a higher rate than the \$82.00 per sq.ft. median of the Complainant's comparables. The Respondent further argued that the Complainant's equity comparable located at 2600 61 Ave SE is the most similar to the subject property as it is a multi building property constructed in 1998 with a site coverage ratio of 36%, and an interior finish proportion of 10%; and the \$90.00 per sq.ft. rate of assessment of this similar property demonstrates that the subject has been equitably assessed.

[12] The Respondent also provided CARB 2049/2011-P, and submitted that a similar equity argument was rejected by the Board at the subject's 2011 assessment complaint hearing.

[13] With respect to the Respondent's contention that the Complainant is not entitled to put forward an "equity" argument in the absence of first establishing the subject's market value with market evidence, the Complainant submitted that there is no dispute that the assessments in evidence properly reflect market value; the issue is only whether those estimates of market value are equitable in relation to one another.

[14] In summation, the Complainant argued that the Complainant's onus or burden of proof has been met as the evidence of the Complainant demonstrates that the assessment of the subject is abnormally high in relation to thirteen typical industrial properties at page 12 of C1. The Complainant further submitted that the Respondent failed to provide any evidence to the Board to demonstrate that the assessment is equitable in relation to the assessments of similar properties, and the only evidence before the Board is that of the Complainant.

Decision:

[15] The Board finds that there was insufficient evidence to demonstrate that the subject property is inequitably assessed in relation to similar properties.

[16] The Board rejects the Respondent's submission that the Complainant is not entitled to advance an "equity" argument before the Board in the absence of first establishing the subject's market value with market evidence. Where the Complainant concedes that the Respondent's assessments properly reflect the market values of the properties, it makes little sense to compel

the Complainant to provide market evidence, only to confirm the Respondent's estimates of value before an equity comparison can be examined. The Board notes that in this instance, both parties agreed that the assessment values in evidence represent market value as required by the legislation, and neither party presented market evidence to support or refute the market value assessments before the Board.

[17] Notwithstanding the above, in this instance the Board does not find the Complainant's equity analysis to be compelling evidence of an inequity as the sample properties are not only dissimilar to the subject, but dissimilar even amongst themselves. Although the properties exhibit assessment rates ranging from \$62.00 to \$91.00 per sq.ft., a variance of 46.7%, the Complainant failed to make any value adjustments to relate the physical characteristics of the properties to the physical characteristics of the subject.

[18] The Board is not persuaded that the median assessment rate of a sample of dissimilar properties demonstrates an inequity in assessment, and accepts the Respondent's evidence that shows the physical characteristics of the subject, are superior to the median of the sample.

[19] With respect to the individual properties in the sample, the Board finds that the property located at 2600 61 Ave SE, assessed at a rate of \$90.00 per sq.ft. is most similar to the subject as it is a multi-building property, exhibiting a site coverage ratio within 3% of that of the subject. The Board was not persuaded that the property located at 4841 47 Street SE, assessed at the rate of \$82 per sq.ft. is the most comparable to the subject as it is a smaller, single building property, exhibiting a site coverage ratio 10% points higher than the subject; a reflection of its 10.68 acre parcel size, in contrast to the 18.04 acre parcel size of the subject property.

[20] The Board further notes that there was no market evidence presented to support the Complainant's argument that market value rates would be consistent regardless of moderate differences in site coverage ratios or parcel sizes.

[21] The Board however was confused by the Respondent's argument that multi-building properties achieve a higher market value than single building properties of similar total size as a result of their higher construction cost. This argument appeared to be contradicted by the Respondent's subsequent submission that the "multi-building" coefficient reflects a negative adjustment.

The assessment is **CONFIRMED** at: **\$29,800,000.**

DATED AT THE CITY OF CALGARY THIS

14

DAY OF AUGUST, 2012.



J. Krysa,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission (41 pages)
2. R1	Respondent's Submission (132 pages)
3. C2	Complainant's Rebuttal Submission (18 pages)
4.	Jonas v. Gilbert [1881] S.C.J. No. 5
5.	County Strathcona (#20) v. AAAB [1995] A.J. No. 369
6.	Assessor for Area 9 (Vancouver) v. Bramalea Ltd. [1990] C.A.V. 00992
7.	Mountain View County v. Alberta (MGB) [2000] ABQB 594
8.	Bentall Retail Services et al v. Assessor of Area 9 – Vancouver 2006 BCSC 424
9.	Dutchcad Bil Investments Ltd et al v. Area 19 (2008 PAABBC 20081270)
10.	Pinkiewicz et al v. Area 14 (2009 PAABBC 20090993)
11.	Tannant v. Area 17 (2009 PAABBC 20091224)
12.	Peard et al v. Area 01 (2010 PAABBC 20100332)
13.	Stade v. Area 23 (2010 PAABBC 20100567)
14.	CARB 1358/2011-P

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

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Warehouse	Multi Tenant	Equity	Site Coverage Multi Building Site