

**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:

***The Standard Life Insurance Company of Canada (as represented by Cushman & Wakefield Property Tax Services), COMPLAINANT***

and

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

before:

***K. D. Kelly, PRESIDING OFFICER  
J. Joseph, MEMBER  
R. Cochrane, 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 2012 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>009005497</b>
<b>LOCATION ADDRESS:</b>	<b>7019 – 8 ST NE</b>
<b>HEARING NUMBER:</b>	<b>66089</b>
<b>ASSESSMENT:</b>	<b>\$4,490,000</b>

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

Appeared on behalf of the Complainant:

- *Mr. J. Goresht – Cushman & Wakefield Property Tax Services*  
*Ms. S. Ubana – Cushman & Wakefield Property Tax Services*

Appeared on behalf of the Respondent:

- *Ms. K. Cody - 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] One procedural matter and one jurisdictional matter arose during the course of the hearing:

**Procedural Matter**

[3] At the commencement of the hearing the Respondent argued that the Complainant's Rebuttal package C-2 contained new, previously undisclosed, information on page 2 and pages 9 to 13 inclusive of the document. The Respondent requested that this information not be permitted into the hearing.

[4] The Respondent accepted the Complainant's data on pages 3 to 8 inclusive of C-2.

[5] The Complainant advised that he was of the view that all the information in C-2 is required for clarification purposes and was validly before the Board.

[6] The Board advised that at the point in the hearing when the rebuttal document is to be presented, the Board would review the matter and make a determination on this issue.

[7] Subsequently, at the later point in the hearing where the Complainant's Rebuttal was to occur, the Board recessed to review the Complainant's document C-2.

Board Decision

[8] The Board called the hearing back to Order.

[9] The Board finds that pages 3 to 12 inclusive in Rebuttal Document C-2 are to be deleted because they contain entirely new information not previously disclosed.

[10] The Board finds that on page 3 of C-2, two columns in the matrix containing data referencing 2012 information are to be deleted for the same reason as cited above.

[11] The Board finds that the matrix on page 13 is an identical repeat of page 3 and the same limitations apply to it as apply to page 3 of C-2 as noted above.

Jurisdictional Matter

[12] At the later rebuttal stage of this hearing, the Complainant argued orally, and referenced page 4 of his Rebuttal Document C-2. He argued that Section 5(4) of "Matters Relating to Assessment Complaints Regulation AR 310/2009" (MRAC) must apply to this hearing in regard to the City's Assessment Explanation Supplement (AES) found on page 12 of document R-1. Section 5(4) states:

"5(4) A local assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant."

[13] The Complainant referenced a copy of a series of four e-mails – two requests from the Complainant and two replies from the City – all as on pages 5, 6, 7 of C-2. The e-mails detailed the Complainant's request for the Assessment Explanation Supplements (AES) for several properties, including the subject. The requests and replies commenced on January 23 and ended January 30, 2012 when the 2012 AES for the subject was sent to the Complainant as requested.

[14] The Complainant argued that pursuant to his company's January 23 and January 27 e-mail requests, and unlike the 2011 AES for the subject, the City had failed to provide a 2012 AES showing – like the AES on page 12 of R-1, that the subject had received a multi-building assessment discount.

[15] The Complainant argued that the City has now disclosed this information on the subject's AES on page 12 of R-1, and therefore it should not be considered by the Board pursuant to Section 5(4) of MRAC.

[16] The Respondent clarified that unlike 2011, in 2012 the City did not include the multi-building discount information on the AES sheets for any industrial property. She indicated that she had personally inserted this information into her AES for the subject (page 12 of R-1) for clarification purposes for this hearing only, and that is why it contains this one slight additional piece of information that is not on the Complainant's copy.

[17] The Respondent noted that the Complainant had received her disclosure document R-1 during the disclosure period, but had not raised this concern. She noted that if the Complainant wanted this information before that time, he has had over 5 months to request it. She suggested that a single phone call would have resolved the matter.

[18] The Respondent argued that the information the Complainant seeks, is, and has been readily available on the City's website since January 4, 2011. On page 20 of R-1 she provided excerpts of the City's website which clarifies "How industrial properties are assessed". She clarified that the website states that there are seven "key factors, components and variables" used in the assessment of all city industrial properties. She further quoted from this information that "The significant characteristics that affect value include.....Multiple Buildings."

#### Board Decision

[19] The Board finds that the Complainant did not challenge any of the Respondent's documentation or oral argument regarding the subject's 2012 AES on page 12 of R-1 when it was presented in detail by the Complainant earlier in this hearing today. The 2012 AES document has thus already been entered into evidence in some detail, without any objection by the Complainant whatsoever.

[20] The Board finds that the aforementioned MRAC Legislation relied upon by the Complainant under [12] and [15] above and copied to page 4 of C-2, does not apply to this Board, which is **not a Local Assessment Review Board**. This Board today is a **Composite Assessment Review Board (CARB)** and therefore the legislation quoted and relied upon by the Complainant, is not relevant.

[21] The Board finds that notwithstanding the foregoing, the information requested by the Complainant – that being the 2012 Assessment Explanation Supplement (AES) for the subject was in fact supplied to the Complainant by the Respondent City on January 23, 2012, some 5 ½ months ago. The Complainant's own e-mail documentation in C-2 confirms this.

[22] The Board finds that the Respondent has explained the City's changed reporting format for Assessment Explanation Supplement (AES) documents from 2011 to 2012, wherein references to multi-building discounts were deleted from the 2012 AES.

[23] The Board finds that if the Complainant required additional information beyond that displayed on the 2012 AES, then it was readily available to him by accessing the City's website, and/or by phone, and/or by e-mail request to the City. The verbal evidence from the Complainant is that he did not avail himself of any of those three optional remedies.

[24] The Board finds that the Complainant's arguments on this matter are without merit.

#### Property Description:

[25] The subject is classified as a single-tenant industrial warehouse (IWS) property although it has two buildings on one titled parcel of 2.19952 acres (ac.). It contains one 12,134 square foot (SF) and one 11,778 SF 1990 era buildings, with 14,356 SF and 14,272 SF of assessable space respectively. The first building has a 23% ratio of office/warehouse finish, while the

second building has 24.96% finish. The combined site coverage is 24.96%. The first building is assessed at \$156.36 per SF whereas the second building is assessed at \$157.48 per SF. The total assessment is \$4,490,000.

[26] **Issue:**

1. The assessment is inequitable and not at market value.

[27] **Complainant's Requested Value:** \$4,000,000.

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

**Issue #1:**

**Complainant's evidence:**

[28] The Complainant Mr. Goresht referenced his document C-1 which was presented in three parts. He identified a copy of the City's 2012 Assessment Explanation Supplement (AES) for the subject. He noted that there are two buildings on one titled land parcel which should have been assessed as if they were one large building, and not as two separate buildings with differing characteristics and perceived values. In addition, he suggested that the AES did not clarify whether a multi-building discount had been applied to the subject during the assessment process.

[29] He argued that in 2011 last year, the subject's assessment had been reduced to \$4,000,000 through appeal, but the City has increased it to \$4,500,000 in 2012. He provided a copy of Calgary Composite Assessment Review Board (CARB) Decision CARB 1366/2011-P wherein the assessment was reduced. He referenced page 4 of 5 in CARB 1366/2011-P (page 7 of C-1) to highlight that Board's decision.

[30] The Complainant suggested that the written evidence and oral argument presented in this hearing today is identical to that presented in the 2011 appeal where the assessment was reduced. Therefore, he argued, it should be reduced again this year.

[31] The Complainant provided all 31 pages of the Respondent's 2011 brief from last year. In particular he identified page 15 (his page 23 of C-1) and the 2011 AES for the subject – pointing out the notation on it that the subject had received a multi-building discount. He noted that this information was not printed on the subject's current 2012 AES which he received by request from the City. He noted that while the assessed rates per SF had changed year-over-year and were reduced slightly from 2011 to 2012, the assessment had increased.

[32] The Complainant also provided a copy of his own complete hearing brief from 2011, including his market sales and equity comparables of that era. He argued that nothing about the subject had changed since last year, and therefore this 2011 market data was still applicable and relevant. He spent some time poring over property details in a matrix (pg 45, C-1) containing 2011 assessment data for twenty properties – noting especially those properties the Board in decision CARB 1366/2011-P last year, considered relevant in reducing the subject's assessment.

[33] The Complainant Mr. Goresht offered that the subject had sold in 2005 for \$2,380,000 in a non-arms length transaction. The building value equated to \$82 per SF in 2005.

[34] The Complainant requested the Board to reduce the assessment to \$4,000,000 – the same value as last year.

Respondent's questions:

[35] Under questioning from the Respondent Ms. Cody, the Complainant Mr. Goresht offered the following:

- That there are two buildings identified on the subject's 2012 AES.
- That he could not recall contacting the City for clarification regarding whether or not a multi-building discount had been applied to the subject's assessment.
- That his firm did not try to contact the City re this file after January 23, 2012.
- That in his current brief C-1 he did not provide any new 2012 market sales and equity evidence – only 2011 data.
- That none of the market values in his RealNet sales transaction sheets have been time adjusted

Respondent's evidence

[36] The Respondent Ms. Cody provided her brief R-1. She argued that each year is a new assessment year requiring analysis of current market data. In this instance that means the analysis of valid sales data from July 1, 2010 to June 30, 2011 – a whole new year of market sales. She argued that the City has completed just such an analysis and used the results to assess the subject – and all other City properties for 2012. She noted that the Complainant has not done this work, he has merely submitted last year's data.

[37] The Respondent argued that the Complainant's data is "outdated" information used for a 2011 appeal, and he has offered no new updated market or equity evidence to this Board today for his current 2012 appeal. Therefore his data, missing all of the current market sales from 2010/2011, is incomplete and unreliable for determining 2012 assessment values.

[38] In contrast the Respondent provided six current time-adjusted market sales, the individual characteristics of which she outlined for the Board. She also provided six equity assessment comparables in a matrix on page 16 of R-1, and seven others on page 17 of R-1. She spent much time outlining and comparing the similarities and differences of the various property characteristics of the thirteen comparables, to the subject and to each other. She offered that the City's analysis of the current market indicates that single-tenant industrial buildings sell for more than multi-tenant buildings.

[39] The Respondent Ms. Cody confirmed that the subject is in fact receiving a multi-building discount in its assessment calculation and further clarified that:

"For the 2012 roll year The City of Calgary has assessed industrial properties using the sales comparison approach with 7 significant characteristics that affect value. Previous years 6 significant characteristics were

utilized, but after numerous board decisions and analysis, it became clear that a 7<sup>th</sup> characteristic titled "multi building" was imperative to arrive at market value. This coefficient applies a negative value adjustment to all parcels that contain more than one building (Out Buildings are not included).

The City of Calgary announced the addition of the 7<sup>th</sup> value characteristic on its website January 4<sup>th</sup> 2011 to notify taxpayers of this important change."

[40] The Respondent also clarified that the website also states:

"The significant characteristics that affect value include:

- Building type: single, multi-tenant or out building
- Assessable building area
- Actual year of construction
- Region/location
- Interior finish ratio
- Site coverage
- Multiple Buildings"

[41] The Respondent provided copies of Assessment Review Board decisions ARB 0540/2010-P; CARB 0855/2011-P; and CARB 1033/2011-P which, she argued, supports the principle that to assess multi-building properties, it is essential to assess each building individually against the City's 7 key assessment components and variables, otherwise inequities can occur. It is incorrect to consider a multi-building site as one large building – which it is not. She referenced this point from CARB 0855/2011-P:

"The Board finds that the characteristic of the subject property however, is that there are 4 smaller buildings rather than one large building. To overlook that fact would be in contradiction of MGA Sec 289(2)"

MGA 289(2) states in part:

"Each assessment must reflect

- a) The characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property..."

[42] The Respondent requested that the Board confirm the assessment at \$4,490,000.

### Complainant's questions

[43] The Complainant Mr. Goresht questioned the Respondent's market sales on page 14 of R-1, in particular questioning the validity and applicability of sales from market zones other the subject's. The Respondent clarified that all market sales were from NE Calgary and analysis of the data shows that they are representative of values from that part of the city, regardless of market zone.

[44] In reference to the City's six market sales on page 16 of R-1, the Complainant requested clarification from the Respondent as to the key property characteristics the City considers when preparing assessments. The Respondent identified land area; footprint; assessable building area; finish; site coverage; and rate per SF as key variables. The Complainant also requested clarification of similar issues regarding the Respondent's equity chart on page 17. The Respondent replied similarly to her responses regarding page 16.

Complainant Rebuttal

[45] The Board has already decided above (beginning at [12] to [24]) on two matters related to the Complainant's rebuttal document.

Complainant Summary

[46] The Complainant Mr. Goresht argued that:

1. the AES evidence provided to the Complainant by the City in January 2012 does not show that a multi-building discount has been applied – the 2011 version did, but not the 2012 version.
2. the Complainant has not received the information it requested in January 2012 and is unable to determine precisely what assessment parameters the City has applied to the subject.
3. in its preparation of the 2012 assessment for the subject, the City did not adhere to Calgary Composite Assessment Review Board Decision CARB 1366/2011-P and maintain the subject's assessment at \$4,000,000.
4. the best market comparable which supports his position regarding the value of the subject is at 3600 – 19 St. NE as shown on page 16 of the Respondent's brief R-1.
5. the subject's 2012 assessment contains errors in fact and is inequitable when compared to other comparable properties.
6. the assessment should be reduced to \$4,000,000.

Respondent Summary

[47] The Respondent Ms. Cody argued that:

1. the City changed its reporting format on AES documents from 2011 to 2012 such that a multi-building discount is automatically applied to multi-building properties, but is not shown on the AES.
2. the City's website contains detailed information about multi-building assessment parameters, and has since January 2011.
3. the Complainant has not availed himself of this website information, and has confirmed that he has not contacted the City about this property file, other than to secure the City's AES for it in January 2012.
4. multi-building properties like the subject have value in the marketplace.
5. each building on a multi-building property must be assessed individually and not as if they were one building because to do otherwise would create inequities in the assessments between and among buildings on subject and neighbouring properties and violate the Municipal Government Act.
6. certain of the City's market comparables may show a lower assessed rate per SF than the subject, but should, due to slightly different site characteristics in some instances.



7. the Complainant provided outdated 2011 market and assessment data which has not been updated for 2012, and lacks an entire year of market transaction data. Therefore his data conclusions are unreliable as to current market values.
8. the Complainant's "best" market sale in C-1 is from 2008, is not time-adjusted, and is four years outdated.
9. the Complainant has provided no current 2012 assessment equity data – only outdated assessments from 2011.
10. under Mass Appraisal, each year is a new assessment year and the City has time-adjusted and analyzed the current market sales and equity data, and provided that current data to the Board.
11. the City is bound by Legislation and is not fettered by previous Board Decisions.
12. the City's market and equity comparables support the assessment.
13. the assessment is fair and equitable and should be confirmed at \$4,490,000.

### **Board Findings:**

[48] The Board finds that while it may have regard to, it is not fettered by previous Board decisions and must decide the merits of this appeal on the basis of the oral and written evidence presented to it in this hearing.

[49] The Board finds that the Respondent City is governed by relevant provincial legislation regarding the preparation of assessments under Mass Appraisal and must prepare assessments based on current market data for each new assessment year. In the case of the subject property, the City has done this.

[50] The Board finds that the Respondent City, when using the Mass Appraisal process, is not fettered by previous Board decisions.

[51] The Board finds that the Respondent provided the information requested by the Complainant under Section 299 of the Municipal Government Act, notwithstanding the latter's arguments to the contrary.

[52] The Board finds that the Complainant's primary market evidence in this hearing is outdated 2011 market and equity evidence which has not been updated.

[53] The Board finds that the Complainant's primary market evidence is missing an entire year of time-adjusted market sales and assessment equity data, and is therefore unreliable.

[54] The Board finds that the Complainant's individual market sales data from 2008, as outlined in his RealNet sheets, has not been time adjusted and is unreliable.

[55] The Board finds that the Respondent's market evidence is superior, current, time-adjusted market sales and equity data which supports the 2012 assessment.

[56] The Board finds that the Respondent has correctly assessed the subject's two buildings pursuant to their individual characteristics, and not as if they were one building as suggested by the Complainant. To do otherwise would have the potential to create assessment inequities and be contrary to the Municipal Government Act section 289(2).

**Board's Decision:**

[57] The assessment is confirmed at \$4,490,000.

DATED AT THE CITY OF CALGARY THIS 30 DAY OF July 2012.

  
K. D. Kelly  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
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 warehouse	Multi-buildings on one property	Data corrections and Section 299 challenge	Internal site equity