

**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:

MacBain Properties Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Ivan Weleschuk, PRESIDING OFFICER

Y. Nesry, MEMBER

J. Pratt, 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:

ROLL NUMBER:	200760551
LOCATION ADDRESS:	10774 42 Street S.E.
HEARING NUMBER:	68597
ASSESSMENT:	\$19,570,000

- [1] This complaint was heard on the 4th day of July, 2012 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- D. Chabot

Appeared on behalf of the Respondent:

- R. Fegan

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

- [2] There were no procedural or jurisdictional matters raised by either party at the start of the hearing. Neither party objected to the panel before them. The hearing proceeded to hear the merits of the complaint.
- [3] During the hearing, when the Respondent asked to have their evidence marked as an exhibit (Exhibit R1), the Complainant noted that their package had two fewer pages than the Respondent's package and the package before the Board. After a quick review, the two pages that were missing were not identified. The Complainant suggested that the Respondent proceed with the presentation, and if the two missing pages are identified and are material to the case being made by the Respondent, the Board can address the matter at that time. During the presentation, the two missing pages were identified as pages 43 and 44 in Exhibit R1 (in the Board's package) and both pages were titled 2012 Industrial Equity Chart. This was the evidence the Respondent intended to present to demonstrate the equity of the assessment. The Respondent acknowledged that, for some reason, these two pages were not in the package provided to the Complainant and therefore were not disclosed in accordance with Section 8 of Matters Relating to Assessment Complainants Regulation (MRAC). The Board notes that under Section 9(2) of MRAC, it is not to hear any evidence that was not properly disclosed in accordance with Section 8 of MRAC, therefore the Board directed that the two pages related to equity evidence not be discussed. The Respondent agreed this was the proper course and the two pages (pages 43 and 44, Exhibit R1) that were not disclosed to the Complainant were removed from Exhibit R1.

Property Description:

- [4] The subject property is a single tenant (owner occupied) property located at 10774-42 Street S.E, in the East Shepard District. The property is 14.1359 acres in size, according to the 2012 Industrial Assessment Explanation Supplement provided by the City. The improvements consist of a warehouse portion with a small amount of mezzanine office area constructed in 2006, and a two storey office building portion (including office, laboratory, cafeteria and gymnasium) constructed in 2007. These two

structures are connected via an enclosed corridor. According to the 2012 Industrial Assessment Explanation Supplement, the footprint of the portions is 69,673 ft² and 33,233 ft² respectively, with an assessable building area of 72,484 ft² and 64,481 ft² respectively (note that the building size was in dispute during the hearing). The property is zoned Industrial-General (I-G) District.

- [5] The property is assessed using a sales comparison approach, with the 72,484 ft² of warehouse assessed as Industrial Warehouse – Single Tenant (IW S) at a rate of \$114.20/ft², and the 64,481 ft² of office space assessed as Industrial Warehouse – Multi-tenant (IW M) at a rate of \$124.22/ft². The assessment is done assuming a 30% site coverage, which results in 6.29 acres of extra land assessed at a rate of \$525,000/acre. The total 2012 assessment is \$19,570,000 as indicated in the 2012 Property Assessment Notice.

Issues:

- [6] The following key issue was raised at the hearing:

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

As the hearing progressed, the matter of the correct size of the improvement and its various use components became an issue.

Complainant's Requested Value: \$15,480,000 as corrected at the hearing

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

1. **Is the subject property correctly assessed using the sales comparison approach?**
- [7] Both parties agreed that the property is unique in the way the improvements are constructed, being predominantly an office structure and a warehouse structure connected via a corridor, and not integrated or configured as a typical office/warehouse property. That said, both parties agree that the improvements are one building and if sold, would sell as one unit. Both parties also agree that the property is owner occupied, and that the owner is the only tenant.

A. Complainant's Evidence

- [8] The Complainant's position is that the sales comparison approach used by the City is not robust enough to properly capture the various building types on the subject, and therefore overstates the value of the subject. The Complainant argued that the income approach is a better approach to use in assessing the subject, as it allows each building type to be specifically treated. The Complainant calculated the assessment using the income approach, applying vacancy rates, operating costs, non-recoverable rates and capitalization rate factors typically used by the City to assess suburban office properties in 2012 (page 86, Exhibit C1).
- [9] With regard to the rental rate applied to the warehouse space, the Complainant used a rate of \$6.75/ft² (actual rate was \$6.79/ft² rounded), which was taken from the rate used in the 2012 Business Assessment Notice (page 54, Exhibit C1). Warehouse lease comparables were presented on page 56, Exhibit C1 showing a rate in East Shepard District of \$5.75/ft², but the higher rate used in the Business Assessment was applied. The rental rate for suburban offices in the southeast quadrant of \$17/ft² and storage space of \$3/ft² were taken from the assessments of other comparable buildings (pages 57 to 76, Exhibit C1).
- [10] The Complainant presented the calculated assessment on page 86, Exhibit C1, totalling \$15,480,000 when the area used for the warehouse area was corrected to reflect the size of each component as presented by the taxpayer in the Assessment Request for Information (ARFI) document dated March 10, 2010 (page 43, Exhibit C1). The Complainant stated that these areas are as measured by the subject agent and the property manager in 2009. The agent also accompanied a City business assessment officer on another occasion when the areas were measured, and implied that the area presented in the ARFI was confirmed by the City, as they used those area numbers in subsequent Business Assessment Notices.
- [11] In response to the City's assessment calculation, the Complainant argued that the City used the wrong areas for the warehouse and office spaces, which is an error in the assessment. The Complainant also stated that an assessment category of Industrial Warehouse – multi tenant (IW M) is clearly incorrect, as it is agreed by both parties that the property is occupied by a single tenant, and the tenant is the property owner (confirmed in Exhibit C1 by the March 10, 2010 ARFI presented on page 43, the 2012 Business Assessment Notice presented on page 54, and 2009 Business Assessment Comparable Report presented on page 55). The Complainant also challenged the percent finish value used for both the warehouse and office portions of the subject property (building type WI S and WI M on the assessment worksheet respectively), showing that using the areas as presented by the Respondent overstate the actual finished area as measured by the Complainant. The Complainant stated that these are errors in the assessment and therefore the Board cannot accept the assessed value.
- [12] In the direct evidence and particularly in questions of the Respondent and in Rebuttal evidence (Exhibit C2), the Complainant challenged the comparability of the four sales comparables that the Respondent presented in Exhibit R1 to support the assessed value. The Complainant noted that:

- the comparable sale located at 4700-47th Street SE is post facto and included a number of cranes,
- the comparable sale located at 4880-104 Avenue SE is a multi-tenant building,
- the comparable sale located at 10820-27 Street SE & 2807-107 Avenue SE & 135 Commercial Drive is a portfolio sale with the 135 Commercial Drive property located in Rocky View County, and
- the comparable sale located at 803 & 803R 24 Avenue SE is a redevelopment site, with the improvements much older and in much poorer condition than the subject.

- [13] Various previous assessment decisions and excerpts from assessment manuals were presented to support the income approach methodology used by the Complainant, support the criticism of the sale comparison approach used by the City, and to support various aspects of the evidence or argument presented by the Complainant.
- [14] In summary, the Complainant stated that weaknesses in the assessment approach and some of the comparable sales used in the model were demonstrated. Further, errors in the assessment were identified, therefore the assessment is clearly not correct. The income approach used by the Complainant to calculate the requested assessment is a better reflection of the market value of the subject, as it is more robust and addresses the different space types within the building area, and is based on the correct building area.

B. Respondent's Evidence

- [15] The Respondent stated that the assessed value reflects the market value of the subject property. All industrial warehouse properties in the municipality in 2012 were assessed using the sales comparison approach. The City's assessment model is based on sale data, and appropriate adjustments are made to the data when it is entered into the model. The model calculates an assessed value for each individual assessed property based on key characteristics of that property, including size, percent finish, 30% site coverage, etc. The assessment is the result of the model. Notwithstanding the comments of the Complainant regarding the factors used to derive the assessment, and specifically as referred to on the 2012 Industrial Assessment Explanation Supplement (page 13, Exhibit C1), the assessment reflects the market value of the subject property, which is the assessment standard under the Municipal Government Act.
- [16] With regard to the issue of the correct building size, the Respondent indicated that the areas used in the assessment (page 13, Exhibit C1) were taken from the plans filed as part of the Development Permit. The areas are taken off these plans, and the Respondent opined that this was the appropriate size to use for assessment purposes, because it is based on signed drawings.

- [17] To support the assessment, the Respondent presented four comparable sales (pages 28 to 41, Exhibit R1), with supporting evidence taken from the RealNet data base to demonstrate that the subject assessed rates per square foot are similar to (within the range of) the sale prices of these four comparable properties. The Respondent commented on the comparability of each of the four sales to the subject. In reply to questions from the Complainant, the Respondent acknowledged that one of the four was a post facto sale, but still indicative of the market value of the subject. The other three sales vary in how "comparable" they were to the subject, but the four comparables presented provide a market price range of similar properties (on a per square foot of building basis assuming 30% site coverage) that includes the assessed value of the subject property.
- [18] Because the equity data was not properly disclosed, the Respondent did not present this evidence.
- [19] In response to the Complainant's evidence and approach, the Respondent argued that the second floor "storage" space was really unfinished office space and if the income approach was properly applied, the appropriate rate for this space should be the unfinished office rate. The Respondent also noted during questioning that much of the material that was indicated as being "stored" by the Complainant in the photographs in Exhibit C1 appeared to be building materials required to finish the office space.
- [20] In summary, the Respondent indicated that there is a difference in the building size and that it is impossible to say, based on the evidence presented, which number is correct. The Respondent pointed out that an income approach also requires sales data. Since the income approach requires more sales data to derive the various factors and rates, when faced with a paucity of sales data, the sales comparison approach is the better methodology. The Respondent also made the point that the City strongly feels that the second floor space is not "storage", but rather "unfinished office space" as indicated in the labels on the photographs presented in Exhibit C1 (pages 21-23). Therefore, the income approach as applied by the Complainant to calculate the requested assessment is not correct. The assessment as presented by the City is correct and is supported by the range of prices indicated by the four sales comparables.

C. Board's Conclusions

- [21] Because of the unique nature of the subject property, the Complainant is of the opinion that using an income approach, as used by the City to assess suburban office property in 2012, is the better approach to use in assessing the subject. The requested assessment is calculated based on using typical City factors and rates used for suburban offices, and adding a "warehouse" component to the analysis. The City approached the assessment assuming that the subject property is an industrial warehouse with office finish, and applied a market value approach which was used for all properties in this assessment category in 2012. It is the Board's opinion that because of the unique nature of the subject property, neither approach accurately captures the value of the property for assessment purposes. That said, the Board is required to come to a conclusion as to the market value of the subject property for assessment purposes based on the evidence presented.

- [22] With regard to the Complainant's evidence, the Board notes that the City did not prepare any income approach factors or rates for industrial warehouse properties in 2012, as they did not use this approach for this assessment category. The Complainant used the income approach factors and rates the City applied in 2012 to the "suburban office" components of the property. The Complainant also applied factors such as vacancy rate, non-recoverable rate and capitalization rate for the "suburban office" category to the "warehouse" space component of the subject property in their income approach calculation. No evidence was presented indicating that the "suburban office" rates are appropriate or correct to use in determining the value contribution of the "warehouse" space. The rental rate used in the calculation of the warehouse space component is based on the rental rate used in the 2012 Business Tax Assessment for the property, which is more than what the limited market data presented indicated for warehouse properties. The Board was not convinced that deriving a rental rate for "warehouse" space and integrating it into the income approach calculation for suburban offices results in a value that is credible or that reflects market value for this component.
- [23] Within the suburban office portion of the analysis, the Complainant indicated that the second floor of the office portion of the building, some 38,826 ft² according to the Complainant's evidence (page 86, Exhibit C1) is not finished or occupied, and is being used for storage. In response to questions from the Board, the Complainant was not able to provide any specific information on what is being stored, nor why such a large storage space is required, nor how this storage component is integral to the use of the property by the occupant. The photographs presented on pages 22-26 of Exhibit C1 showing this space are labelled as "undeveloped office space" and show unfinished office space with a small number of filing cabinets and assorted office furniture in one corner of the space, and what appeared to be construction materials in other areas of the space. The photographs show that this area has in place some metal studs framing internal partition walls, cement floor, and some roughed in wiring. Ceiling tiles are in place over some of the space, with ceiling T-bar framing (without the tiles in place) over some of the space. The space has large windows on at least two of the exterior walls with some of the windows having window coverings, and the exterior walls appear to be finished. Based on these photographs, the size of the space and the minimal storage that appears to be occurring in this space, the Board does not agree that this area should be categorized as "storage" for assessment purposes. Typically, storage area in a suburban office is located in the basement or lower floor. Based on the evidence presented and relying on the photographs presented, the Board concludes that this area is more properly characterized for assessment purposes as unfinished office space. Neither party presented typical rates applied by the City for unfinished office space in assessing suburban offices in 2012.
- [24] The Board notes that the City assessment identifies 6.26 acres of "extra land" and provides a specific assessment value for this component. The Complainant's requested assessment calculation does not address this component, and there was no discussion or evidence presented by the Complainant regarding how the large parcel size should be addressed. The Complainant, by not addressing extra land directly, implies that the building rental rates used in the calculation capture the value of the entire property. That may be true of more typical, smaller suburban office properties where the building footprint is maximized and any additional land is used for parking related to the building use. In this case, the size of the property not under the building footprint is considerably

more than is required for parking purposes and is used to support the commercial activities of the tenant, primarily related to the warehouse space. Therefore, this excess area appears to have value to the owner/occupant. The Board concludes that the value of the entire parcel area for assessment purposes is not properly captured in the Complainant's requested assessment calculation.

- [25] For the reasons above, the Board does not accept the Complainant's requested assessment of \$15,480,000 as correct or reflective of market value.
- [26] The Board's attention then turned to the assessed value as presented by the City. The Respondent stated that the assessment is done using the City's assessment model for industrial warehouse properties, with factors and coefficients derived from the data base supporting that model. To support the assessment, four sales comparables of industrial warehouse buildings are presented. The Complainant identified weaknesses in all four of the comparable sales, which at least required some adjustments to the price before they could be used as a true price "comparable". The Board concurs that there are elements in each of the four comparable sales that require adjustments before the sale prices could be used to support the assessed value of the subject. Since these adjustments were not made, the Board puts limited weight on the sale prices of these four comparable sales.
- [27] The Complainant provided a number of comments and evidence purporting to show that there is a paucity of sales of similar properties, therefore calling into question the use of a sales comparison approach to assess the subject, and by extension the validity of the assessment model results. The Complainant also commented on the weaknesses in these four comparable sales presented by the Respondent. Notwithstanding those comments, the Complainant did not demonstrate that the City did not make appropriate adjustments to the sale prices of the three comparable sales properties apparently used in the assessment model before using them in the model, nor did the Complainant demonstrate that the City did not treat the other sales in the industrial warehouse data base appropriately.
- [28] The Complainant did not present any equity evidence to demonstrate that the assessed value determined by the City is incorrect, or to support their requested assessment. The Board did not hear any equity evidence from the Respondent, as this portion of the evidence package (Exhibit R1) was not properly disclosed and so not considered as evidence before this Board.
- [29] The Board acknowledges that the subject property is unique and that it does not fit into either the typical industrial warehouse or typical suburban office assessment category. Little specific information was provided by the Respondent as to how the assessment was prepared, other than referring to the explanation sheet on page 13, Exhibit C1, which was presented by the Complainant not the Respondent. It appears to the Board that the Assessor may have used building types and percent finish rates to drive the assessment to result in an assessed value that reflected the expected market value, although there was no evidence presented to substantiate or refute this inference. The Complainant argued that the application of the IW-M (Industrial Warehouse – multi tenant) building type does not reflect the owner occupant, single tenant use of the subject property. The percent of finish was also questioned by the Complainant, but the Board acknowledges that this issue is directly tied into how the second floor unfinished

office area is appropriately handled for assessment purposes.

- [30] After due consideration of all the evidence and relying especially on those portions of the evidence specifically referred to in this decision, the Board does not accept the analysis presented by the Complainant to support the requested assessment. While the Complainant argued weaknesses in the City's assessment approach; weaknesses in some of the data and how it may have been used in the model; and errors in the assessment calculation, the Board is not persuaded that the assessment is incorrect. Furthermore, since the Board did not accept the Complainant's requested assessment (and the Board does not have the evidence to make modifications that it considers necessary), it is left with only the City's assessed value. The Board therefore concludes that the assessment of the subject is as indicated in the 2012 Property Assessment Notice, of \$19,570,000.
- [31] The Board is very concerned with the difference in the assessed areas between the Complainant's requested assessment calculation totalling 155,922 ft² (page 86, Exhibit C1) which is apparently the result of measuring the building in 2009, and the City's 2012 Industrial Assessment Explanation Supplement totalling 136,965 ft² (page 13, Exhibit C1) based on plans submitted with the application for a Development Permit. This is a difference of some 19,000 ft², which is clearly due to more than just rounding error. It is the Board's conclusion that building size is a matter of fact and that where a substantial difference in building size exists between what the taxpayer provides in their Assessment Request for Information (pages 41-43, Exhibit C1) and the City's assessment record (page 13, Exhibit C1), it is incumbent upon the City Assessment Department to take appropriate steps to resolve such an issue. This clearly has a significant impact on the correct assessment, in that if the Complainant's size numbers are correct, the City is under-assessing the property regardless of assessment methodology. If this is the case, then it impacts the equity of other taxpayers in the City. As a minimum, taxpayers should expect that the City is using the correct base information in preparing its assessments and confirming or correcting errors in a timely manner. The Board notes that this difference and dispute in building size has existed for a number of years. The Board expects that steps will be taken to resolve this issue before the next assessment is prepared.

Board's Decision:

- [32] For the reasons discussed above, the Board concludes that the 2012 Assessment of \$19,570,000 be confirmed.

DATED AT THE CITY OF CALGARY THIS 18th DAY OF July 2012.


Ivan Weleschuk
Presiding Officer

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

NO.	ITEM
C1	Complainant Disclosure
R1	Respondent Disclosure
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.*