

**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:

K.E.G. Investments Ltd. (as represented by AltusGroup), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member 1, D. Pollard
Board Member 2, K. Farn***

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 2011 Assessment Roll as follows:

ROLL NUMBER: 116022302

LOCATION ADDRESS: 5110 - 76 Avenue SE

HEARING NUMBER: 63860

ASSESSMENT: 3,720,000.00

This complaint was heard on 20 day of June, 2011 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom One

Appeared on behalf of the Complainant:

- *Mr. John Smiley*

Appeared on behalf of the Respondent:

- *Mr. Ian McDermott*

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

The property complaint was heard in conjunction with Roll numbers 116024308, 116024605, and 116028101.

At the outset of the hearing, the Respondent objected to the Claimant's rebuttal submission on the grounds that portions of the document represented new evidence not previously disclosed. Upon review, the Board finds that pages 13 to 15 were in fact, new evidence, and were not allowed to be presented. Pages 77 to 128 were also objected to by the City, but were allowed because they represented supporting documentation to previously presented evidence in the Capitalization Rate study that was called into question by the Respondent. The last section objected to—pages 129 to the end of the document – was also allowed since they represented background information on capitalization rates contained in the Respondents own manual, and was not considered new information.

Property Description:

The subject is an industrial property, comprised of two single tenant warehouse buildings, located in Foothills Industrial Park. Both buildings are 11, 250 s.f, and both were constructed in 1990. The total building area is 22,500 s.f. The site area is 1.75 acres. The site coverage is 29.52 per cent.

Issues:

1. The subject property assessment is in excess of its market value, and is not equitable with the assessments of similar properties.
2. The property is over-assessed. Its value is poorly predicted by the city's Industrial model.
3. The income approach to value produces a superior estimate of market value than the direct sales approach.
4. Given that the subject is metal clad buildings rather than built-in place structures, they can be considered as somewhat unique. A Butler style building does not have the same quality or desirability as built-in-place structures using concrete tilt-up or block construction.

Complainant's Requested Value: \$2,720,000.00

Evidence

The board notes that the current assessment calculates to \$165.33 per s.f. of assessable area.

At the outset of the hearing, the Complainant referred the Board to a capitalization rate analysis (Exhibit C-1) that would be applicable to this and a number of other complaints that bore some commonality to the complaint at hand. The study contained eight transactions from which an appropriate capitalization rate for two groups of buildings – constructed pre-1994 and post 1994, was extracted. No rationale for the 1994 demarcation was offered. The Complainant's conclusion was that the appropriate capitalization rates for the two building groups was;

Pre-1994; 8.25 per cent

Post-1994; 7.75 per cent.

The Respondent argued that the study was based on the leased fee interest, rather than the fee simple estate, and was therefore flawed. The Board does not agree, since that issue could only be determined by a review of the evidence submitted for each individual hearing.

In the Evidence Submission, the Complainant outlined ten comparable leases for premises in South East Calgary. Rents range from \$5.25 to \$10.50 per s.f. One of the leases is the subject property at \$10.50 per s.f. Start dates for the leases range from July, 2007, to December, 2010. Two of the comparable leases are post facto, although their exclusion does not affect the sampling. In addition, it is noted that the stabilized rents contained in the Complainant's capitalization rate study ranged from \$6.04 to \$12.40 per s.f. The median rent appeared at \$9.03. The Complainant adopted \$10.50 per s.f in the income calculations.

The Complainant adopted a vacancy rate of 5.0 per cent. That rate was not controverted by the Respondent. Finally, the Complainant adopted a capitalization rate of 8.25 per cent.

The Complainant presented no direct sales evidence or comparables.

In support of the equity argument, the Complainant presented six equity comparables. Net rentable areas of the comparables ranged from 22,560 s.f. to 28,603 s.f, compared to the total area of the subject at 22,500 s.f. Site coverage varied from 37.2 to 47.4 per cent, compared to the subject at 29.52 per cent. The per cent finish ratios of the comparables varied from six to 28 per cent, which brackets the subject's 12 per cent finish ratio. The 2011 assessment per s.f ranged from \$114.00 to \$134.00 per s.f.

The Respondent presented 13 equity comparables, which actually comprised six multiple building properties that were compared to the subject's individual buildings. The equity comparables range in size from 3,003 to 52,973 s.f. The majority of the buildings were between 10,400 and 16,000 s.f. Individual building assessments range from \$140 to \$233 per s.f.

The Respondent also presented eight sales comparables, four of which were multiple building properties. Of the eight transactions, four of the buildings had interior finish levels of 30 per cent or higher, compared to the subject at 12 per cent overall. The four comparables reflected per s.f prices of \$132, \$188, \$141, and \$230. Another of the data, at 2010-11 Street SE is in the Central District, and is not considered comparable by reason of location. Finally, three of the City's comparables reflected site coverage ratios of 3.93, 12.05 and 13.03 per cent,. The remaining comparables reflect per s.f prices from \$131 to \$134 per s.f. with an approximate median of \$133 per s.f.

In response to the Complainant's income argument, the Respondent presented five rental comparables, reflecting rents ranging from \$10.50 to \$13.50 per s.f. The Respondent also

submitted evidence that the actual rent applicable to the subject property was \$12.00 per s.f. That rent was dated August, 2010 – after the effective date. The City Assessment Request for Information in effect at the effective date of assessment shows the applicable subject rent to be \$10.00 per s.f.

Board's Decision

As for the premise that income capitalization is the preferred method of valuation, this Board, in keeping with CARB Order #0522/2010-P, *"will not identify a preference as to which valuation approach should be used to determine the assessed value of any property. It is the assessed value that this Board is authorized to adjudicate. If any party can satisfy the Board, to the extent required by law, that in application of any applied approach to value errors have been made that have resulted in an incorrect assessed value, then it is those errors, supported by market based evidence, that should be given consideration"*. That is not to say that an alternative method of valuation cannot be applied. However, any alternative method must be as equally well founded in market evidence as the method already being employed. In the case of multiple building properties, the income approach can be arguably more appropriate since separate rents can be applied to individual units or buildings.

While much of the evidence contained in the Complainant's Capitalization Rate study was unchallenged by the Respondent, the Board does not accept the Claimant's "cut-off" date of 1994 as being the demarcation line between a 7.75 and 8.25 per cent capitalization rate. The date is simply too arbitrary, and does not reflect typical market behaviour. Moreover the Complainant's analysis does not appear to take into account a property's condition, location, or other factors that can from time to time affect investor's yield expectations that have a direct effect on capitalization rates.

Although the Board agrees that it is necessary for the City to calculate buildings individually in the case of multi-building properties, this Board does not agree that the aggregate of the parts accurately represents the market value of the whole in all instances, unless adequate adjustments are applied. The Respondent referred to a coefficient that applies a negative value adjustment to all parcels that contain more than one building. However, the analysis that was submitted appears to be a table of 36 2010 CARB reductions to multi-building properties under complaint. However, no analysis was presented to show how that table was or could be applied to the subject.

The rental evidence presented by both parties leads this Board to the conclusion that \$10.50 per s.f. represents the market, or typical rent for a premises such as the subject circa the effective date. That rent, reduced by five per cent for vacancy, and capitalized by a capitalization rate of 7.75 per cent, produces an indication of value of \$2,895,962, or \$128.71 per s.f. of building area..

The Complainant's equity comparables produce a value range from \$114 to \$134 per s.f. The most comparable properties presented by the Respondent indicate a sale value range from \$131 to \$134 per s.f. At the median of \$133 per s.f., the Assessment calculates to \$2,992,500. The Board finds that the valuation based on the revised income calculations, together with the sales considered to be the most comparable, indicates a value of \$2,990,000.

The revised assessment is reduced to \$2,990,000.00.

DATED AT THE CITY OF CALGARY THIS 21 DAY OF July, 2011.

Jerry Zezulka
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
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| 1. | C1 Complainant Disclosure; Industrial Capitalization Rate Analysis, 2011 Assessment Year |
| 2. | C2 Evidence Submission of the Complainant |
| 3. | C3 Rebuttal Submission of the Complainant |
| 2. | R1 Respondent Disclosure; Assessment Brief |

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.*