

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS
Revised**

In the matter of complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Kane Investment Corp. c/o Norcal Realty & Management Corp.
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
D. Pollard, MEMBER
A. Wong, MEMBER***

The complaints to the Calgary Assessment Review Board are in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER	LOCATION ADDRESS	HEARING NO.	ASSESSMENT
032501009	1 2221 41 Ave NE	63766	\$603,500
032501108	2 2221 41 Ave NE	63766	\$598,500
032501207	3 2221 41 Ave NE	63766	\$598,500
032501306	4 2221 41 Ave NE	63766	\$599,000
032501405	5 2221 41 Ave NE	63766	\$598,500
032501504	6 2221 41 Ave NE	63766	\$608,500
032501603	7 2221 41 Ave NE	63766	\$598,500
032501702	8 2221 41 Ave NE	63766	\$600,000
032501801	9 2221 41 Ave NE	63766	\$598,500
032501900	10 2221 41 Ave NE	63766	\$598,500
032502007	11 2221 41 Ave NE	63766	\$602,000
032502106	12 2221 41 Ave NE	63766	\$633,000
032502205	13 2221 41 Ave NE	63766	\$605,000
032502304	14 2221 41 Ave NE	63766	\$603,500
032502403	15 2221 41 Ave NE	63766	\$603,500
032502502	16 2221 41 Ave NE	63766	\$603,500

The complaints were heard on June 29, 2011, in Boardroom 2 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- C. Van Staden

Appeared on behalf of the Respondent:

- W. Wong, K. Hess (Jurisdictional Matter)

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

At the commencement of the hearing the Complainant raised a jurisdictional matter with respect to the sufficiency of the summary of testimonial evidence included in the Respondent's exhibits for some of the hearings on the agenda for the day. The Complainant argued that upon hearing the Respondent's evidence the deficiency of the Respondent's summary of testimonial evidence will be clearly evident to the Board. In response to questions from the Respondent, the Complainant submitted that the request was not for additional information, but rather that costs should be awarded against the Respondent.

The Respondent argued that there was no mention of a cost application in any of the Complainant's rebuttal materials, and in any event the hearings should proceed as the Board would need to hear all of the evidence to determine the sufficiency of the Respondent's summary of testimonial evidence.

Decision:

In light of the positions of the parties, the Board decided to proceed with hearing the merits of the complaints as scheduled, and directed the Complainant to make any application for costs pursuant to s.52 of *Matters Relating to Assessment Complaints Regulation, Alberta Regulation 310/2009*, within 30 days of the conclusion of the hearings for those specific complaints where sufficiency of the summary of testimonial evidence was at issue. This would allow the Respondent an opportunity to respond to the cost application at a hearing of that matter.

Property Description:

The subject properties are 16 individually titled industrial warehouse condominium units constructed in 1976, and ranging in area from 4,093 to 4,100 sq.ft. The units are assessed at an approximate rate of \$147 per sq.ft. with the exception of unit 12, which is assessed at a rate of \$155 per sq.ft.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment
4. an assessment class

At the commencement of the hearing the Complainant withdrew matter 4, and indicated that the evidence and submissions would only apply to matter 3, an assessment amount. The Complainant set out 14 grounds for the complaints in section 5 of the complaint forms, however at the hearing the Complainant proceeded with only four objectives as set out on page 3 of C1; with no evidence or argument raised with respect to objective #4 related to equity.

Issue 1: The income approach to value is the best method of valuation for the subject property and indicates a market value of \$106.00 per sq.ft. (of improvement area). {Objectives 1 and 2}.

Issue 2: The direct sales comparison approach indicates a market value of \$134 per sq.ft. (of improvement area), and supports a reduction to the 2011 property assessment. {Objective 3}

Complainant's Requested Value:

The Complainant requested that the properties be valued at a rate of \$106.00 to \$115.00 per sq.ft. of improvement area, resulting in total assessment values ranging from \$428,191 to \$490,822 as set out on page 73 of exhibit C1.

Board's Decision in Respect of the Complainant's Issue:

Issue 1: The income approach to value is the best method of valuation for the subject property and indicates a market value of \$106 per sq.ft. (of improvement area). {Objectives 1 and 2}.

The Complainant argued that as a result of changing market conditions during the assessor's 36 month sales analysis period and the limited number of recent sales to June 30 of the assessment year, the assessor's direct sales comparison approach model is unreliable and an alternate valuation approach should be employed. In support of that argument, the Complainant submitted an ASR (Assessment to Sale Ratio) graph of the sales relied on by the assessor, illustrating that in only 23% of the instances the model predicted a sale price within 5% of the actual sale price of the property; in the remaining 77% of the instances the model predicted sale prices outside of the legislated range of 0.95 to 1.05 [C2, p.8].

The Complainant further argued that the income approach to value was the most reliable approach for the subject property, and submitted the following valuation parameters:

Vacancy rate: {5.0%} estimated from a number of Q1 (first quarter 2010) third party market reporting agencies [C2, p.17].

Market rent: {\$9.25 - for units with less than 30% developed office area} derived from the median rent rate of the actual net effective leases in the subject property; and {\$10.00 – for units with greater than 30% developed office area} derived from the median rent rate of nine warehouse/office leases ranging in area from 4,202 to 5,312 sq.ft. and commencing between January 2009 and August 2010. The sample lease rates ranged from \$8.50 to 12.00 per sq.ft. and were not limited to leases of warehouse condominium properties [C1, p.17].

Capitalization rate: {8.25%} determined from an analysis of eight industrial properties (of the 56 sales that occurred between January 2009 and June 2010) ranging in price from \$1,850,000 to \$25,825,000 and exhibiting a median capitalization rate of 7.98%. The eight sales were further analysed on the basis of their age, with the five properties constructed prior to 1994 (as is the subject property) exhibiting a median capitalization rate of 8.24%, and the three properties constructed after 1994, exhibiting a median capitalization rate of 7.79% [C2, p.19]. The Complainant indicated that the sales relied upon were of larger industrial properties, as it was impossible to find sales of condominium warehouse units with corresponding income information that could be used to establish a capitalization rate.

The Complainant set out the calculation for each of the condominium units under complaint, employing the valuation parameters as set out above to arrive at valuation conclusions ranging from \$106 to \$115 per sq.ft. [C1, p.16].

The Respondent argued that the direct sales comparison approach employed by the assessor is the most appropriate approach for the subject properties, as warehouse condominiums typically trade as owner-occupied properties, with the potential income generating characteristics being less significant. The Respondent did not prepare an estimate of value by the income approach.

Decision: Issue 1

The Board finds that there was insufficient relevant evidence to conclude that the income approach to value is the best method of valuation for the subject property.

With respect to the selection of a valuation approach, the Board has on several occasions indicated that it will not identify a preference as to which valuation approach should be used to determine the assessed value of a property. Notwithstanding, there may be circumstances when one or more approaches will provide a superior estimate of value to another approach; typically when one approach mirrors the motivations of the parties in the marketplace better than does another approach. In this instance, the Respondent's assertion that warehouse condominiums typically trade as owner-occupied properties was substantiated by the Complainant, who indicated that it was impossible to find sales of condominium warehouse units with corresponding income information from which to establish a capitalization rate. Although the Complainant argued that the reported capitalization rate for condominium bays range from 6 - 9% with a median of 8%, there was no market evidence to support these figures.

The Board also finds that there was insufficient evidence from which to conclude the sizes of the units as assessed is incorrect, as the actual leases were not submitted in evidence, and the rent roll consolidated lease space by tenant and not by unit. Further, as all of the units are owned by one owner, the leases may or may not align with the assessable legal boundaries of each unit.

The Board also finds that there was insufficient evidence to conclude that the assessor's direct comparison approach valuation model is unreliable, as there was no evidence submitted with respect to the median ASR, nor to the Coefficient of Dispersion of the ASR's. Further, although the Complainant's graph indicated that 77% of the sales fell outside of the legislated range of 0.95 to 1.05 for the median ASR, the Complainant conceded that the evidence suggests the model appears to estimate values below the sale price almost twice as often as above the sale price, 51% vs. 26%, respectively.

Issue 2: The direct sales comparison approach indicates a market value of \$134 per sq.ft. (of improvement area), and supports a reduction to the 2011 property assessment. {Objective 3}

In support of the issue, the Complainant submitted four sales of condominium warehouse bays exhibiting the following particulars: [C1, p.14]

Address	Sale Price	Net Rentable Area	Rate / sq.ft
11 1420 40 Ave NE	\$520,000	4,800	\$108
6 1815 27 Ave NE	\$634,000	4,111	\$154
2 624 Beaver Dam Road NE	\$655,000	4,660	\$141
17 2219 35 Ave NE	\$600,000	4,704	\$128
Median			\$134

In support of the assessment the Respondent submitted three warehouse condominium sales, one of which was also included in the Complainant's evidence, but indicated a different size. The particulars are set out below:

Address	Time Adj. Sale Price	Net Rentable Area	Rate / sq.ft
9 3800 19 St NE	\$569,982	3,000	\$189
14 2280 39 Ave NE	\$236,974	1,236	\$192
17 2219 35 Ave NE	\$600,000	4,096	\$146

Decision: Issue 2

The Board finds that the relevant sales evidence exhibits a market value range that is supportive of the subject assessments.

The Board notes that several of the third party sales reports submitted in evidence were conflicting with respect to various property attributes. With respect to the sale of 17 2219 35 Ave NE included in evidence from both parties, the Board finds that the contradictory third party evidence with respect to the actual size of the property (4,096 sq.ft. vs. 4,704 sq.ft) renders the sale of no value in establishing a rate per sq.ft. that could be applied to the subject properties. With reported (and again contradictory) ceiling heights of either 12 or 14 feet, the difference in total area could not be explained as mezzanine space due to restricted ceiling height.

The Respondent's first sale, located at 9 3800 19 St NE and exhibiting a price per sq.ft. of \$189 was put into question by the Respondent's own supporting documentation at page 22 of R1, which indicates that the property is 3,500 sq.ft., and not 3,000 sq.ft in size as set out in the chart at page 20 . The resulting sale price of \$162 per sq.ft. however, supports the assessment rate of the subject properties. The Respondent's remaining sale, a 1,234 sq.ft. unit located at 14 2280 39 Ave NE, is found to be dissimilar to the subject properties as it is approximately 30% of the size of the subject units; in addition, there was no supporting documentation of the particulars of the sale submitted in evidence, therefore the Board was unable to apply significant weight to this market indicator.

The third party sales reports also indicate that the Complainant's remaining three sales include significant amounts of mezzanine spaces reflected in the total area calculations, as set out below:

Address	Sale Price	----- Area -----			-----Sale Price / Sq.Ft.-----	
		Main	Upper	Total	Main Area	Total Area
11 1420 40 Ave NE	\$520,000	3,000	1,800	4,800	\$173	\$108
6 1815 27 Ave NE	\$634,000	3,311	800	4,111	\$191	\$154
2 624 Beaver Dam Road NE	\$655,000	3,313	1,347	4,660	\$197	\$141
Median					\$191	\$141

Whereas the evidence indicates that the subject properties do not contain mezzanine spaces (with the exception of 339 sq.ft. in unit 12), the Board finds that the Complainant's sales are dissimilar to the subject, and the median rate per square foot is inappropriate to apply to the main floor areas of the subject properties. Despite the dissimilarities, the median values illustrated above, plus the Respondent's sale of 9 3800 19 St NE at \$162 per sq.ft., establish a value range of \$141 to \$191 per sq.ft. in relation to the range of assessed values of the subject properties at \$146 to \$155 per sq.ft., and well above the Complainant's requested rates of \$106 to \$115 per sq.ft.

Board's Decision:

The assessments are confirmed as set out below:

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DATED AT THE CITY OF CALGARY THIS

10

DAY OF AUGUST, 2011.


J. Krysa, Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission
2. R1	Respondent's Submission
3. C2	Complainant's Submission – Capitalization Rates
4. C3a	Complainant's Rebuttal Submission – Part 1
5. C3b	Complainant's Rebuttal Submission – Part 2

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.*