

**COMPOSITE
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:

***Harmin Holdings Ltd. & Leotel Holdings Ltd.
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***C. J. Griffin, PRESIDING OFFICER
J. Rankin, MEMBER
P. Charuk, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 048042709

LOCATION ADDRESS: 2016 – 25 Avenue NE

HEARING NUMBER: 61236

ASSESSMENT: \$3,510,000

This complaint was heard on 3rd day of August, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- C. Van Staden

Appeared on behalf of the Respondent:

- M. Berzins

Procedural or Jurisdictional Matters:

A request pertaining to Procedure was made of the CARB by both parties that a capitalization rate argument and evidence be presented by each party and that all of the relevant materials relating to same be carried forward for each of the ensuing complaints to be heard by this panel of the CARB involving these same parties over the course of the coming week.

The CARB agrees with this request of the parties and will carry forward the evidence and arguments of both parties for both this property complaint and, where appropriate, for the ensuing complaints to be heard by this same panel of the CARB this same week of August 2nd, 2011 and involving the same Complainant and Respondent.

Property Description:

The subject property is multi-tenanted warehouse type property that was originally constructed in 1978. The building has a footprint of approximately 26,825 Sq. Ft. and a total assessed area of 33,925 Sq. Ft. The building is approximately 43% finished for office uses. The property sits on a 2.12 acre parcel of land and it has a site coverage of 29.07%. The property incorporates an 'excess land' allocation of approximately 0.06 acres.

Issues:

While there are a number of interrelated issues outlined on the Assessment Review Board Complaint form, the Complainant reduced the issues to be considered by the CARB to:

1. The Income Approach is the best method for valuing the subject property given the volatile economy that was/is in place for the assessment valuation period.
2. The Direct Comparison Approach also supports a reduction on the 2011 property assessment.

Complainant's Requested Value: \$3,320,000.

Party Positions:**Complainant's Position**

The Complainant argued that the Assessor has used the incorrect method of valuation in establishing the assessed value of the subject property, primarily because the lack of sufficient sales data results in a valuation derived through application of the Direct Sale (Comparison) Approach that is not representative of Market Value. In support of its use of the Income Approach, the Complainant produced (Exhibit C-2) a Capitalization Rate Study (Study) that was intended to support the requested assessed values for the subject property and the ensuing twelve (12) complaints to be heard by this same panel during the course of the coming week.

The Study presented by the Complainant is a lengthy document presented to the CARB in three (3) contiguous reports totalling some 416 pages of evidence and argument. The Study is based upon an analysis of industrial property sales that were recorded between April 2009 and April 2010. The Study is based on the analysis of eight (8) sales that were recorded within the aforementioned timeframe. Five (5) of these sales relate to older pre 1995 buildings and three

(3) sales deal with newer, post 1995, buildings. The conclusion of the Study is a capitalization rate of **7.75%** for the newer (post 1995) "A" properties and **8.25%** for the older (pre 1995) "B" class properties.

In their analysis the Complainant has utilized the actual income in place at the time of sale and then applied typical allowances for vacancy and non-recoverable expenses. Any vacant space within the building being analysed is assumed to be rented at the prevailing market rates at the time of the sale. The Complainant contends that this is the same process used by the Assessor to derive capitalization rates and produced (Exhibit C-2 pg. 15) a copy of the *City of Calgary Industrial Capitalization Rate Process* which verifies this contention.

Additionally, the Complainant provided (Exhibit C-1 pg. 12) two property sales which they contend also supports the requested assessed value for the subject. These sales involve industrial buildings located in N.E. Calgary and both were sold in 2009. One of the buildings is 39,600 Sq. Ft. in size while the other is 49,703 Sq. Ft. in size. The time adjusted sales price per Sq. Ft., as determined by the Assessor but utilized by the Complainant, is \$96 in one case and \$83 in the other.

Respondent's Position

The Assessor maintains that they have sufficient sales data to warrant application of the Direct Comparison (Sales) Approach which they maintain is an acceptable method to derive the assessed value for a warehouse type property. The Assessor acknowledges that a goodly number of the sales utilized in their analysis date to pre 2009 but it is the Assessor's further contention that the applied 'time adjustments' have adequately addressed the differential between the economic conditions existent pre 2009 to those existent post 2009.

The Assessor has also challenged the Complainant's Study by comparing the lease data utilized in that Study to the lease data provided on the Assessment Request For Information (ARFI) (Exhibit R-1 pgs. 55 – 86) which has been obtained from each of those property owners. The Assessor found that the Complainant has utilized information that was either not available to the City or was not in existence at the time of the valuation (July 1, 2010). The leases utilized by the Assessor were in place at the time of sale and could be verified as at July 1, 2010. The Assessor contends that this brings into question the reliability of the Study. Additionally the Respondent pointed out to the Board that one of the three (3) sales used for the Complainant's post 1995 capitalization rate analysis, that being the property located at 10905 – 48th Street SE, was purchased as a part of a portfolio involving properties located in Calgary, Edmonton and Acheson and as a result the value attributed to the sale is unreliable. The Assessor also pointed out to the CARB that there have been several CARB decisions from this year that have been presented with essentially the same evidence as has been presented for this Hearing and those decisions have not accepted the Complainant's capitalization rate argument.

The Respondent also introduced (Exhibit R-1 pg. 14) six (6) sales comparables which they maintain provides support for the current assessment. All six of the sales relate to similar properties located in the northeast industrial area. The building sizes range from 24,880 Sq. Ft. to 43,745 Sq. Ft. vs. the subject at 33,925 Sq. Ft. The year of construction (YOC) of these six buildings range from 1980 to 1998 vs. the subject at 1978 and the site coverage ranged from 31.4% to 48.51% vs. the subject at 29.01%. The assessed rate/Sq. Ft. for these six properties ranges from a low of \$108/Sq. Ft. to \$130/Sq. Ft. which, the Assessor maintains, supports the \$104/Sq. Ft. rate applied to the subject.

The Respondent also introduced (Exhibit R-1 pg. 13) six (6) equity comparables for the CARB to consider. All six of these properties are located in the South Airways Industrial Park, as is the subject. The buildings are of a similar size and age and all have about the same percentage of office finish. The assessed rates per Sq. Ft. range from \$96/Sq. Ft. to \$116/Sq. Ft. and indicate a median of \$105/Sq. Ft. and the Assessor maintains that this provides equity support for the assessed value of the subject property.

Board's Decision:

The assessment is **confirmed** at **\$3,510,000**.

Board Reasons:

There are a number of previous CARB decisions, including CARB 0638-2010-P authored by this Presiding Officer, which clearly state that the method of deriving the assessed value of a property is not a matter upon which to base a Complaint. The CARB will not identify a preference as to which of the three common approaches to value (Income, Cost or Direct Comparison) should be used to determine the assessed value of a property. It is the assessed value of the property that the CARB is authorized to adjudicate, the method chosen to derive that assessed value is not an issue for the CARB to decide.

The CARB concurs with the Respondent with regard to the sale of the property located at 10905 – 48th Street SE and finds that this sale, being a part of a portfolio sale, creates some doubt as to the veracity of the reported sales price. With this in mind the CARB is of the judgment that the two (2) remaining sales that have been analysed for the post 1995 group of industrial properties does not constitute a large enough sample to adequately provide an indication as to the appropriate capitalization rate for that entire class of properties.

The Respondent has valued the subject property in the same manner as they have valued the entire class, with a few exceptions, of industrial properties in Calgary and that is through the application of the Direct Comparison (Sales) Approach. The Respondent has not prepared an income approach analysis in order to defend the assessed value and nor should they be required to do so. The Respondent maintains that they have applied a time adjustment factor to the numerous sales they have analysed and that adjustment has adequately addressed the differential between the economic conditions that existed pre 2009 as opposed to the economic conditions that prevailed post 2009; however, they produced no evidence to support this contention. This lack of support is problematic for the CARB. It is difficult for the CARB to adjudicate a valuation decision when the parties use entirely different methods of deriving the assessed value of any given property. In their arguments the parties essentially rely upon attempting to discredit the opposition's method of valuation and while the CARB is fully aware that there can be weaknesses in any valuation approach, this does not serve to support their valuation conclusions. The foregoing underscores the fact that in the final analysis it is the fairness, correctness and equity of the assessed value that the CARB must determine. The CARB finds that, in this case, it is the resulting assessed value per Sq. Ft. of assessed building area that serves as the common unit of comparison. If the requested value falls outside the range indicated by the sales of similar properties then that serves to provide an indication to the CARB that the requested value is somewhat suspect. In the case before us the requested value is close to (within $\pm 5\%$) the assessed value of the subject.

The Complainant is seeking a relatively minor reduction ($\pm 5\%$) in the assessed value of the subject property and as a result the evidence introduced by both parties can be said to support either of the party positions. Analyzing multi-million dollar properties to within a $\pm 5\%$ tolerance is difficult at the best of times, but when the matter is placed before an adjudicating authority such as the CARB, then the evidence required to convince the CARB that such an adjustment in the assessed value is required needs to be exactly on point and unequivocal. In this case the CARB does not find the evidence of either party to be so precise that it convinces the board to make such an adjustment. It is the responsibility of the Complainant to provide the CARB with clear and precise evidence to support an adjustment to the current assessment and in a case where the requested adjustment is relatively minor, in amount not importance, then that evidence needs to be even more on point and the CARB simply did not find the evidence of the Complainant to be so convincing as to result in a reduction to the current assessment.

DATED AT THE CITY OF CALGARY THIS 16 DAY OF August 2011.



C. J. Griffin,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant's Capitalization Rate Study Presented in three (3) parts
2. R1	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.*