

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of a 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:

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

and

The City Of Calgary, RESPONDENT

before:

J. Krysa, PRESIDING OFFICER
D. Pollard, MEMBER
D. Julien, 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:	200755759
LOCATION ADDRESS:	10 Smed Lane SE
HEARING NUMBER:	64318
ASSESSMENT:	\$68,100,000

The complaint was heard on September 22, 2011, in Boardroom 5 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- D. Mewha

Appeared on behalf of the Respondent:

- J. Young

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

This matter was originally scheduled in conjunction with several other matters during the week of August 8 to 12, 2011. By agreement, the parties submitted evidence and argument with respect to the merits of the Complainant's income approach methodology, involving the Complainant's exhibits: C2a, C2b, C3, C5, C6, and C7, at the earlier hearing of File 64531, (CARB 1740/2011-P). It was agreed that the evidence and argument of both parties would be applicable to the subject property of this decision. By agreement, the parties further requested that the Board consider the evidence and argument submitted in respect of Files 63931 and 63933 (CARB 1732/2011-P), with respect to the subject's land value as set out in issue 2.

Board's Decision: The Board agreed to hear the applicable income approach evidence and argument from both parties during the hearing of file 64531, and consider that evidence and argument in the context of the subject property of this decision. The Board further agreed to consider the evidence and argument submitted by both parties at the hearing of Files 63931 and 63933, with respect to the subject's land value.

Property Description (as assessed):

The subject property is a 45.02 acre parcel of land, improved with a 757,072 sq.ft. (square foot) single tenanted industrial warehouse structure, constructed in 1998. The improvement is comprised of 670,775 sq.ft. of warehouse area, 68,881 sq.ft. of office area on two floors, and 17,416 sq.ft. of ancillary area, developed as a cafeteria for the original owner-occupant. The effective land to building ratio is 38.6%, and the total assessment equates to \$89.95 per sq.ft. of total improvement area.

Issues:

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

3. an assessment and 4. an assessment class

The Complainant did not pursue matter #4, and led evidence and argument only in relation to matter #3, an assessment amount. The Complainant set out 13 grounds for the complaints in section 5 of the complaint forms, with a requested assessment of \$45,584,000; however, at the hearing only the following issues were in dispute:

Issue 1. The improvement assessment includes insufficient depreciation for physical and functional obsolescence.

Issue 2. The land assessment is greater than the market value of the land.

Issue 3. The income approach to value is the most appropriate valuation method for the subject property.

Issue 4. The recent sale of the subject property demonstrates a market value indication below the assessment.

Issue 5. The assessment of the subject is inequitable in relation to similar properties.

Complainant's Requested Value:

The Complainant requested an assessment value of \$54,060,000.

Board's Decision in Respect of the Issues:

Issue 1. The improvement assessment includes insufficient depreciation for economic and functional obsolescence.

The Complainant submitted that the cost approach (Cost Approach to Value) has been employed by the assessor in the preparation of the current assessment, whereby the land and improvement components are valued independently, with the sum of the components to reflect market value. The Complainant argued that the cost approach as employed, does not reflect the legislated standard of market value as the assessor has only applied a standard depreciation factor from a table, that reflects only normal physical and functional depreciation due to aging of an improvement. The Complainant argued that the assessor failed to consider economic and functional obsolescence which would reflect a loss in value over and above that resulting from an improvement's age; depreciation which could only be measured in the marketplace by a comparison of "cost" to "market value".

The Complainant argued that an income approach valuation, reflecting current market rents, vacancy and capitalization rates appropriate for the physical characteristics of the subject, would provide a measure of functional and external obsolescence that should be applied to the subject's (normal) depreciated replacement cost.

In support of the argument for additional depreciation, the Complainant provided an income approach valuation of the subject property, setting out an estimate of market value of \$54,061,129. [C1, p.18]

In further support for additional depreciation, the Complainant submitted a copy of a \$47,000,000 offer to purchase the subject, which has recently been accepted by the owner. [C1, pp.103-118]

The effective additional depreciation amounts are calculated below:

	Indicated Market Value	Land Value	Improvement (Residual) Value	Improvement DRCN*	Indicated Obsolescence	
Income Approach	\$54,061,129	\$19,564,700	\$34,496,429	\$48,540,982	-\$14,044,553	-29%
Accepted Purchase Offer	\$47,000,000	\$19,564,700	\$27,435,300	\$48,540,982	-\$21,105,682	-43%

*DRCN – Depreciated Replacement Cost New

Following the Complainant's submission, the Respondent recommended that the improvement assessment be revised to \$40,565,300, resulting in a total assessment of \$60,130,000. In support of the revised improvement value, the Respondent submitted a Marshall and Swift summary report reflecting a "Mega Warehouse" classification in contrast to the original "Industrial Light Manufacturing" structure classification. [R2]

The Respondent submitted that the recommendation would reduce the current assessment to approximately the same value as the assessment for the 2010 tax year, and argued that the recommended value was appropriate as the Complainant had withdrawn the subject's 2010 assessment complaint.

In response, the Complainant agreed that the reclassification is warranted to reflect the subject's physical characteristics, however, argued that the Respondent still failed to reflect sufficient depreciation from all sources as the recommended total value still exceeds the Complainant's income approach valuation and the agreement for sale by a significant margin. The Complainant also argued that the Respondent has further decreased the depreciation allowance, as the revised Marshall and Swift summary report displays a 10.2% depreciation allowance in contrast to a 13.4% exhibited on the original summary report at page 10 of C1.

A recalculation of the additional depreciation, based on the Respondent's recommended reassessment is set out below:

	Indicated Market Value	Land Value	Improvement (Residual) Value	Improvement DRCN*	Indicated Obsolescence	
Income Approach	\$54,061,129	\$19,564,700	\$34,496,429	\$40,566,867	-\$6,070,438	-15%
Accepted Purchase Offer	\$47,000,000	\$19,564,700	\$27,435,300	\$40,566,867	-\$13,131,567	-32%

*DRCN – Depreciated Replacement Cost New

Decision: Issue 1

The Board finds that the assessor's cost approach valuations fail to adequately recognize all forms of depreciation.

The Board was persuaded by the market evidence of the Complainant demonstrating a range of market values well below the current assessment, indicating a loss in value that was not refuted by the Respondent.

Although the Respondent argued that additional depreciation beyond the normal allowance provided by the Marshall and Swift depreciation table was not warranted, the Respondent failed to provide a market analysis in support of the argument. Further, the Respondent conceded that an analysis was not performed to determine whether or not additional depreciation was warranted, during the preparation of the original assessment or the recommended assessment.

The Board finds that the Respondent's reclassification and reassessment is not definitive, or persuasive as the Respondent conceded that he had not inspected the subject property before preparing the reassessment. Although the Board accepts that the "Mega Warehouse" classification may well be warranted, the Respondent's classification and ranking of a +\$40 million structure he has not inspected leaves the Board somewhat apprehensive. Further, the Respondent could not provide an explanation for the lower normal physical and functional depreciation rates set out on the report, or the 2 year "effective age" assigned to the 12 year old warehouse component, which supports the Complainant's position regarding insufficient depreciation.

Issue 2. The land assessment is greater than the market value of the land.

The Complainant provided the 2011 assessment notice from the municipality exhibiting the following assessed values.

2011 Tax Year	(Valuation date: July 1, 2010)	\$68,100,000
2010 Tax Year	(Valuation date: July 1, 2009)	<u>\$60,170,000</u>
	Increase:	\$ 7,930,000

The Complainant argued that as the property was valued on the basis of the cost approach to value, only minimal changes reflecting an inflation factor between 2009 and 2010 costs of construction, and minimal additional depreciation reflecting the improvement being one year older should have been applied. Accordingly, the Complainant suggested the increase in the total assessment was likely entirely attributable to an increase in the land assessment, despite limited recent large parcel sales and a relatively flat market between 2009 and 2010.

The Complainant argued that the current land valuation formula applied by the Assessor overvalues large industrial parcels of land, and that the subject property should be assessed at a rate of \$390,000 per acre. The Complainant further argued that as there has been a dearth of recent sales of large industrial land parcels, the significant increase in value between 2009 and 2010 as suggested above is unwarranted and without support.

In support of the argument, the Complainant submitted 4 sales of industrial land parcels that transferred between July 2007 and September 2008. The parcels range in size from 22.61 acres to 29.75 acres, and exhibit a range of time adjusted sale prices from \$293,749 to \$412,800 per acre, with a median rate of \$390,960 per acre. [C1, p.43]

The Complainant further submitted 8 recent sales of small industrial land parcels that transferred between December 2009 and October 2010. The parcels range in size from 1.08 acres to 2.10 acres, and exhibit a unit value range from \$509,868 to \$535,000 per acre, and median and average rates of \$527,500 and 524,546 per acre, respectively. [C1, p.51]

To determine an appropriate adjustment to reflect the principle of diminishing returns of large parcels, the Complainant submitted five June and July 2007 sales of small industrial properties that ranged in size from 1.53 acres to 15.81 acres. The sale of 15.81 acres was comprised of 15 subdivided parcels in a block, with an effective average of 1.05 acres each. The median rate per acre exhibited from these 5 sales, at \$502,203, was determined to be 26% greater than the July 2007 sale price of a 25.07 acre parcel included in the analysis of large industrial properties at page 43 of C1. The Complainant argued that this (-26%) "differential" should be applied to the \$525,000 per acre rate evident from the recent small parcel sales set out on page 22 of C1, resulting in a rate of \$390,000 per acre, appropriate for the subject properties. [C1, p.43]

The Respondent submitted that industrial land values in the municipality have decreased by approximately 15%, however, the subject's land assessment increased for the 2011 tax year as a result of a revised valuation formula that more accurately predicts market values. The formula applied to the subject properties and other industrial vacant land parcels is set out below:

Size (Acres)	Base Rate	Factor	Effective Rate
First 10	\$ 525,000.00	100%	\$ 525,000.00
10 to 20	\$ 525,000.00	85%	\$ 446,250.00
> 20 Acres	\$ 525,000.00	75%	\$ 393,750.00

In support of the base land rate, the Respondent provided an analysis of eighteen industrial parcel sales under 3.35 acres in size, exhibiting a range of time adjusted sale prices from \$443,430 to \$712,310 per acre, with a median rate of 525,632 per acre. [R1, p.177]

In support of the assessment rate of the subject property, the Respondent provided a further analysis of 3 sales of industrial parcels ranging in size from 5.95 acres and 13.55 acres, exhibiting a range of time adjusted sale prices from \$431,885 to \$646,462 per acre, with a median rate of \$446,109 per acre, in contrast to the subject's assessment at \$434,578 per acre. [R1, p.177]

Decision: Issue 2

The Board finds that the subject's land assessment is greater than the market value of the land, and the assessor's land valuation formula does not adequately reflect diminishing returns as related to large parcel sizes.

The Board was persuaded by the Complainant's evidence of time adjusted sale prices; specifically the (most recent) 2008 sale and resale of a 22.61 acre parcel located at 5925 94 Ave SE, which reflect a time adjusted market range of \$394,035 to \$412,800 per acre. This value range was also supported by the Complainant's recent sales of small parcels, as adjusted by the 26% rate differential to reflect parcel size. Although the subject's 45.02 acre parcel is significantly larger and may warrant a lower rate, in the absence of evidence of similarly sized parcels, the Board finds that a rate of \$400,000 per acre reflects the subject's market value.

The Board did not find the Respondent's sales evidence to be compelling, as the largest parcel in the analysis is 13.55 acres, in contrast to the subject property at 45.02 acres. Further, the Board finds that the assessor's land formula is not supported by the sales evidence, as the 9.5 acre parcel in the Respondent's land analysis exhibited a sale price equating to \$446,109 per acre; invalidating the \$525,000 base rate conclusion for the "first 10 acres".

The Board further applied the assessor's land formula to the large parcel sales in evidence from both parties as set out below:

10351 46 St SE (R1, p.177)

Size (Acres)	Base Rate	Factor	Effective Rate	Acres	Value
First 10	\$ 525,000.00	100%	\$ 525,000.00	9.500	\$ 4,987,500
10 to 20	\$ 525,000.00	85%	\$ 446,250.00	0.000	\$ -
> 20 Acres	\$ 525,000.00	75%	\$ 393,750.00	<u>0.000</u>	\$ -
Predicted Value				9.500	\$ 4,987,500
Time Adjusted Sale Price					\$ 4,239,375

4700, 4750 102 Ave SE (R1, p.177)

Size (Acres)	Base Rate	Factor	Effective Rate	Acres	Value
First 10	\$ 525,000.00	100%	\$ 525,000.00	10.000	\$ 5,250,000
10 to 20	\$ 525,000.00	85%	\$ 446,250.00	3.550	\$ 1,584,187
> 20 Acres	\$ 525,000.00	75%	\$ 393,750.00	<u>0.000</u>	\$ -
Predicted Value				13.550	\$ 6,834,187
Time Adjusted Sale Price					\$ 5,850,316

5925 94 Ave SE (C1, p.43)

Size (Acres)	Base Rate	Factor	Effective Rate	Acres	Value
First 10	\$ 525,000.00	100%	\$ 525,000.00	10.000	\$ 5,250,000
10 to 20	\$ 525,000.00	85%	\$ 446,250.00	10.000	\$ 4,462,500
> 20 Acres	\$ 525,000.00	75%	\$ 393,750.00	<u>2.610</u>	\$ 1,027,687
Predicted Value				22.610	\$ 10,740,187
Time Adjusted (Jan 08) Sale Price					\$ 7,000,059
Time Adjusted (Sep 08) Sale Price					\$ 6,681,850

7310 108 Ave SE (C1, p.43)

Size (Acres)	Base Rate	Factor	Effective Rate	Acres	Value
First 10	\$ 525,000.00	100%	\$ 525,000.00	10.000	\$ 5,250,000
10 to 20	\$ 525,000.00	85%	\$ 446,250.00	10.000	\$ 4,462,500
> 20 Acres	\$ 525,000.00	75%	\$ 393,750.00	<u>5.070</u>	\$ 1,996,312
Predicted Value				25.070	\$ 11,708,812
Time Adjusted Sale Price					\$ 9,724,262

5502 72 Ave SE (C1, p.43)

Size (Acres)	Base Rate	Factor	Effective Rate	Acres	Value
First 10	\$ 525,000.00	100%	\$ 525,000.00	10.000	\$ 5,250,000
10 to 20	\$ 525,000.00	85%	\$ 446,250.00	10.000	\$ 4,462,500
> 20 Acres	\$ 525,000.00	75%	\$ 393,750.00	<u>9.750</u>	\$ 3,839,062
Predicted Value				29.750	\$ 13,551,562
Time Adjusted Sale Price					\$ 8,739,019

With respect to the sales evidence of large industrial properties, the Board notes that the assessor's land rate formula predicts market values in excess of the time adjusted sale price in every instance, and further, the error in the prediction generally increases as the size of the parcel increases.

With respect to issue 1, a recalculation of the effective depreciation based on the Respondent's recommended reassessment, and the \$400,000 per acre land value conclusion is set out below:

	Indicated Market Value	Land Value	Improvement (Residual) Value	Improvement DRCN*	Indicated Obsolescence	
Income Approach	\$54,061,129	\$18,008,000	\$36,053,129	\$40,566,867	-\$4,513,738	-11%
Accepted Purchase Offer	\$47,000,000	\$18,008,000	\$28,992,000	\$40,566,867	-\$11,574,867	-29%

*DRCN – Depreciated Replacement Cost New

Issue 3. The income approach to value is the most appropriate valuation method for the subject property.

The Complainant argued that the market value of an improvement may not always be equal its cost, and notwithstanding the Respondent's reclassification and reassessment of the subject property, a proper application of the cost approach requires a market analysis to determine appropriate levels of depreciation from all sources. As such a market analysis should include an income analysis in any event; the Complainant argued that the income approach is the most appropriate valuation method for the subject. Further, it was submitted that the cost approach is typically reserved for "special use" properties, for which market data is generally unavailable.

In support of the income approach methodology, the Complainant provided a several excerpts from the Valuation Guide, as set out below: [C2a, pp. 4-6]

"The valuation technique commonly used by assessors across Canada is based on the *direct capitalization method*, which is widely accepted as a mass appraisal technique and applies under existing jurisprudence."

"With appropriate financial information the income approach makes it possible to estimate market values quickly and easily for large and reasonably complex income producing properties. Furthermore the approach adjusts readily to changing market conditions. For income producing properties, the income approach is well accepted by the marketplace and by the courts."

The Complainant also argued that the capitalization rate methodology employed, is identical to that employed by the Respondent several years ago when the industrial inventory was assessed via the income approach. In support of this, the Complainant submitted an excerpt from the Respondent's submission to the Municipal Government Board in respect of a 2005 appeal, which sets out the following: [C2a, pp.14-16]

"The City agrees that for the sale of properties and the calculation of the capitalization rate, the actual income as opposed to the typical assessed income (based on the median rental rate of a similar group of properties) should be used. However, the actual income must still be adjusted for vacancy and non-recoverable expenses due to the regulation of mass appraisal. It is this adjusted actual income that must be used in the calculation of the capitalization rates because the capitalization rates will be applied to typical incomes that have been adjusted by 9%."

In establishing a capitalization rate conclusion, the Complainant submitted a summary of eight industrial property sales that transferred between April 2009 and April 2010, exhibiting a range of capitalization rates from 7.39% to 9.53%, and a median rate of 7.96%. The Complainant submitted that, as the data illustrated that the sales exhibiting higher capitalization rates were associated with older properties, the sales were stratified by improvement "age" to arrive at the following capitalization rate conclusions: [C2a, p.19]

Year of Construction	Capitalization Rate Range	Capitalization Rate Conclusion
1994 and older	7.96% - 9.53%	8.25%
1995 and newer	7.39% - 7.78%	7.75%

In the calculation of capitalization rates and the application thereof, the Complainant argued that the 5% vacancy and non-recoverable expense allowance reflects city wide long term vacancy levels, and is supported by third party market publications. [C2a, pp.17, 236-245]

In support of the rent rate conclusion of \$5.75 per sq.ft., the Complainant submitted a summary of six single-tenanted premise leases, of areas ranging from 102,183 sq.ft. to 266,785 sq.ft., commencing between November 2005 and January 2010, and exhibiting rental rates ranging from \$4.30 to \$6.45 per sq.ft, and a median rent rate of \$5.76 per sq./ft. The Complainant further submitted a summary of twelve single or multi-tenanted leases, of areas ranging from 102,624 sq.ft. to 251,966 sq.ft., commencing between February 2008 and September 2010, and exhibiting rental rates ranging from \$5.25 to \$8.35 per sq.ft, and a median rent rate of \$6.10 per sq.ft. The median rent rate of only the 2010 leases is \$5.50 per sq.ft., and the median of the 2009 and 2010 leases is \$6.38 per sq.ft.; however, the Complainant argued that the \$6.38 per sq.ft. median is influenced upward by two 2009 leases of refrigerated premises. [C1, p.78]

In further support for the \$5.75 per sq.ft. rent rate conclusion, the Complainant provided two third party, early 2010 industrial market reports setting out average "asking" rates for industrial premises greater than 50,000 sq.ft. of \$5.99 per sq.ft. (Q1, city wide), and \$5.88 per sq.ft. (Q2, SE region). The Complainant argued that the \$5.75 per sq.ft. rent rate conclusion was further supported by the municipality's own net annual rental value conclusion for business tax purposes, as evident on the 2011 business assessment notice. [C1, pp.80-82]

The Complainant set out an income approach valuation calculation for the subject property, establishing the following value: [C1, p.79]

Building Area (sq.ft.)	Market Rent	Vacancy and Non-Recoverable	Capitalization Rate	Market Value	Market Value per sq.ft.
767,000	\$ 5.75	5%	7.75%	\$ 54,061,129	\$ 70

The Complainant also set out income approach valuation calculations for the subject property based on market rents of \$5.50 and \$6.00 per sq.ft. to indicate a range of value from \$51,710,645 to \$56,411,613, in contrast to the current assessment at \$68,100,000 (\$89 per sq.ft.) and the Respondent's recommendation of \$60,130,000 (\$79 per sq.ft.). The Complainant further submitted that the \$47,000,000 agreement for sale reflects a rent rate of \$5.00 per sq.ft., at a 5% vacancy rate and at the Complainant's 7.75% capitalization rate conclusion. [C1, p.79]

As a test, the Complainant submitted a calculation to demonstrate that a rent rate of \$7.24 per sq.ft. is required to support the current assessment with a 5% vacancy allowance and at a 7.75% capitalization rate conclusion, in contrast to the leases in evidence that range from \$4.30 to \$8.35 per sq.ft.; with the highest lease rates evident from refrigerated premises. [C1, p.79]

The Respondent argued that the recommended assessment of \$60,130,000, based on the cost approach meets the legislated market value standard, and is the most appropriate approach with which to value the subject property, a "one of a kind", large scale manufacturing facility that was custom designed to suit the original owner-occupant. Also, as the subject property is owner occupied and there is no income information available, the income approach is not an appropriate valuation methodology, and further, the income approach should not be employed as +/-50% of industrial property sales were of owner-occupied properties where the income potential was not the prime consideration in the determination of the sale price. The Respondent also argued that an income approach valuation would not be in the "spirit" of mass appraisal with respect to the legislated requirements relating to typical market conditions and fee simple estate.

In response to the Complainant's capitalization rate analysis and conclusions, the Respondent argued that the Complainant's eight sales were insufficient to establish a valid capitalization rate

conclusion, and that an analysis of all 56 sales from January 1, 2009 to June 30, 2010 should have been undertaken. With respect to the capitalization rate conclusion, the Respondent submitted a third party market report setting out a range of industrial capitalization rates from 6.75% to 7.25%. [R1, p.297]

The Respondent further argued that the Complainant's income approach methodology has been rejected by the Calgary Assessment Review Board in some ninety five, 2011 decisions relating to industrial properties. The Respondent provided ten 2011 decisions, and three 2010 decisions of the Assessment Review Board, and an MGB decision relating to various areas of dispute regarding Board comments relating to the sufficiency of sales for the sales approach, site specific valuation issues, leased fee estate issues, lease date issues, assessment : sales ratio issues, and costs issues. [R1]

The Respondent argued that the assessed value established by the cost approach is supported by recent market activity. In support of that argument, the Respondent provided a chart of seven industrial property sales that transferred between December 2007 and April 2010, ranging in size from 116,724 to 168,964 sq.ft., and exhibiting time adjusted sale prices ranging from \$81 to \$135 per sq.ft., and a median rate of \$114 per sq.ft. The Respondent provided a further chart of four large industrial property sales ranging in size from 301,930 to 410,483 sq.ft., (a 2008 sale resold in 2010), that transferred between February 2008 and November 2010 at sale prices ranging from \$86 to \$97 per sq.ft., with a median of \$89 per sq.ft. [R1, p.177]

The Respondent did not provide any direct market evidence to refute the Complainant's income approach valuation; however the Respondent prepared eleven income valuations, relying on the Complainant's income approach coefficients of \$5.75 per sq.ft. net rent, 5% vacancy, and at a 7.75% or 8.25% capitalization rate, dependent of the improvement's year of construction. The resulting estimates of market value were compared to the Respondent's time adjusted sale prices in the form of a ratio where 1.00 reflects an estimate of market value that equals the sale price of the property. The ratios evident from this analysis range from 0.51 to 0.85 with an overall median of 0.72. The Respondent argued that the analysis demonstrates that the Complainant's income coefficients result in estimates below market value. [R1, p.215]

In response to questions from the Board, the Respondent conceded that the subject may be somewhat super-adequate as a result of the 18% finished area within the subject property in comparison to typical warehouse improvements; however, he argued that those characteristics would suggest a market value higher than that of a "typical", basic warehouse structure.

With respect to previous decisions of the Board, the Complainant argued that the Assessment Review Board has not rejected the Complainant's income approach methodology as argued by the Respondent, but has in some instances relied on it, and in other, earlier instances commented on shortcomings in evidence and or argument; shortcomings that have been addressed at this hearing. The Complainant further submitted that, notwithstanding previous board decisions, a Board is not bound by the decisions of another Board, and each Board must weigh the evidence and argument before it.

In rebuttal, the Complainant argued that the Respondent's large industrial warehouse sales are not time adjusted, and also are not comparable to the subject as a result of physical differences such as extensive freezers and coolers, or significantly higher contact rents in place at the time of sale, illustrating leasehold interests over and above the value of the fee simple estate of the properties. Alberta Data Search and RealNet transaction summaries were provided in support of the Complainant's arguments. [C4, C2a pp. 29, 155-206]

The Complainant further argued that the Respondent's ratio analysis was misleading and troubling, as the Respondent's own assessments suggest varying rent rates per sq.ft. amongst the sample properties. The Complainant argued that it was never suggested that the \$5.75 per sq.ft. rent rate conclusion for the subject would be appropriate for all other industrial properties, as the lease rate is the variable that reflects the attributes of each particular property. Further, the properties are not assessed at the same rate per sq.ft., nor did they sell for the same rate per sq.ft.; therefore, it makes no sense to apply the same rent rate per sq.ft. to properties with different attributes as a test.

Decision: Issue 3

The Board finds that as the subject is an investment grade property, its market value is best determined using an approach to value that emulates the approach and analysis taken by the parties in the relevant market, in this instance, the income approach to value.

The Board finds that the Complainant's capitalization rate analysis is a valid indicator of the Calgary industrial market as it relates to the subject property. It is appropriately established, and reasonably well supported with documentary evidence of rents in place at the time of sale, as well as documentary evidence of recent sales transactions.

The Board finds that the sample size of eight sales is sufficient to establish a capitalization rate applicable to the subject property. The eight sales occurred within 15 months of the valuation date, and represent 14%, (8/56) of the sales that occurred in the 18 months preceding the valuation date. Further, excluding the Respondent's estimated 50% owner-occupied sales for which no income data would be available, the Complainant's capitalization rate analysis represents 29%, (8/28) of the sales with available corresponding income data, equivalent to one, out of every three and one half sales. Although the Respondent argued that the remaining (unanalyzed) sales may exhibit lower capitalization rates, the Respondent failed to submit any evidence in support of that argument.

The Board accepts the Complainant's methodology in deriving capitalization rates, by using actual lease rates in place at the time of sale; and market lease rates applied to current and upcoming vacant space. The Board accepts that this methodology mirrors the motivations of participants in the income property market, and is supported by assessment theory as set out in the Valuation Guide, and included on page 26 of C1. The Board further accepts the Complainant's methodology of adjusting the potential gross income by the same allowances that are applied to the potential gross income when the capitalization rate is applied. Notwithstanding the Respondent's argument that this methodology is flawed and unreliable, the Board was persuaded by the Complainant's evidence at page 14 of C2a, and quoted in this decision at page 5 above, that this methodology is essentially identical to that employed by the Respondent in prior years, when industrial assessments were prepared by means of the income approach.

Although the Board accepts the Complainant's methodology in deriving capitalization rates, the Board notes that the best capitalization rate evidence is from properties with actual rents, at or near "market" rents. In the matter before the Board, there was no evidence provided, to refute the Complainant's position that the actual rents in place at the time of the sales, were at or near market rent levels.

The Board agrees that the Complainant's stratification of capitalization rates is subjective and arbitrary; however, the Board accepts that there may be a general capitalization rate

demarcation between older and newer improvements, which is supported in that the capitalization rate ranges do not overlap between the groups. As there was no evidence from the Respondent to refute the Complainant's conclusions, the Board accepts the Complainant's demarcation criteria as reasonable, in this instance.

The Board was persuaded that the Complainant's "Long Term Capitalization Rate Trending Comparison" analysis is compelling evidence of insufficient downward time adjustments to the Respondent's sales, relied on in this matter as support for the cost approach conclusions. Although the Respondent relied on time adjusted sale prices to support the cost approach conclusions, the Respondent failed to provide any evidence or analysis in support of the -6% time adjustment for the 12 month period from July 1, 2008 to June 30, 2009; and the 0% time adjustment for the periods prior to July 1, 2008, and after June 30, 2009. The Board finds the precise dates, and consistent rate of market change are simply too arbitrary, and do not reflect typical market behaviour.

The Board also notes that there was no evidence in support of the Respondent's argument that the income approach was not a viable option for industrial properties, as 50% of the sales were owner-occupied properties where the income potential was not the prime consideration in the determination of the sale price. The Board notes that occupancy of the properties is not an attribute in the model, as owner occupied properties are stratified along with single tenant properties, which may include more than one tenant and are income generating.

The Board was also confused by the Respondent's argument that a valuation by means of the income approach would not be in the spirit of mass appraisal, as the Board is aware that the majority of other income producing properties are prepared by the income approach, and further, as indicated by the Respondent, as recently as 2007 the municipality relied on the income approach to value industrial properties.

With respect to the previous decisions of the Assessment Review Board submitted by the Respondent in R1, the Board notes that although the Respondent argued that the issues were the same as the issues in the current matter, the Board notes that six of the matters were complaints regarding retail properties and one was a suburban office, which would have had entirely different evidence than what is before the Board in this industrial property complaint. Further, two of the decisions were regarding cost applications only. Of the remaining five decisions which relate to industrial properties, the Complainant's cross examination demonstrated that previous Board's have not "dismissed" the Complainant's capitalization rate analysis as argued by the Respondent. For example, CARB 1014/2011-P states, "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.", and in CARB 1116/2011-P, the Board merely states the Complainant's income approach was not relied on, as the Board in that instance found that there was sufficient sales evidence available.

The Respondent further argued that the Complainant's income approach has been consistently dismissed by previous Boards in the decisions submitted in R3. However, that position is based on the Respondent's interpretation of the decisions, and it is not an interpretation shared by the Complainant, or the Board. Without a review of all of the evidence before the Board in each of the matters, the Board cannot make a finding in this regard, nor should it. Although decisions of the Board relating to matters with similar evidence and argument may be persuasive, they are not binding on a Board. This Board will not ignore evidence properly before it and merely adopt decisions of other Boards that have heard similar matters, because to do so, would breach the principles of administrative law and natural justice.

The Board finds the Respondent's seven sales comparables are dissimilar to the subject property, and not appropriate market indicators. The largest improvement was a 168,964 sq.ft. structure located on a 6.46 acre parcel; in contrast to the subject, a 757,072 sq.ft. structure located on a 45.02 acre parcel. Further, the largest parcel size in the sample was 14.01 acres; with the remainder ranging between 4.44 and 9.65 acres.

The Board further finds the Respondent's four large industrial sales are dissimilar to the subject property, and not appropriate market indicators. The largest improvement located at 5801 72 Ave SE was a 410,483 sq.ft. structure, slightly over ½ the size of the subject property, containing 40,000 sq.ft. of freezers and coolers, and leased at rent rates from \$7.60 to \$8.35 per sq.ft. as indicated in the Complainant's rebuttal evidence.

Although the Respondent's chart indicates the property at 7140 40 St SE is a 54.17 acre parcel, the related Alberta Data Search document in the Complainant's rebuttal [C4] indicates the parcel size to be 13.83 acres. The lease rate in place at the time of sale was \$6.60 per sq.ft. as indicated in the Complainant's evidence [C4].

The remaining sale of 4100 Westwinds Drive NE is a 301,930 sq.ft. structure, slightly less than 40% of the size of the subject property on a 15.84 acre site located in the NE region of the municipality. The lease rate in place at the time of sale was \$6.65 per sq.ft. as indicated in the Complainant's rebuttal evidence. The Board notes that there were no supporting documents in the Respondent's submission to confirm the property and sale details set out in the chart, nor were the Respondent's large industrial sales time adjusted to the legislated valuation date.

The Board finds that the Respondent's test of the Complainant's income parameters is not compelling evidence that the Complainant's income approach coefficients yield estimates of value below market value. On the contrary, the Board recognizes that an income property's physical characteristics are generally reflected in both its rental rate and its sale price, and there is commonly a relationship between the two. In the Board's opinion, the assignment of an identical rent rate, to a sample of properties with varying physical characteristics would expectedly yield estimates of value inconsistent with the sale prices of those properties.

Issue 4. The recent sale of the subject property demonstrates a market value indication below the assessment.

The Complainant argued that the recent marketing activity of the subject property demonstrates that the current assessment and the Respondent's recommended assessment significantly exceed the market value of the property. The Complainant submitted that the subject property has been listed for sale on the open market with CB Richard Ellis Alberta Ltd. since November 2009, culminating in an offer to purchase for \$47,000,000, which was accepted by the owner in February 2011. In support of that argument, the Complainant provided copies of the real estate listing, an email string relating to the marketing process, a letter of intent from a prospective purchaser, and the offer to purchase and interim agreement referred to above.

The Respondent argued that as of the date of this hearing, the transaction remains pending and the ensuing sale of the property will occur well after the legislated valuation date of July 01, 2010, therefore the cost approach is the best evidence of market value as of the valuation date.

Decision: Issue 4

The Board finds that the February 2011 agreement for sale, demonstrates that the Respondent's cost approach estimates exceed the subject property's market value.

The evidence of a brokered, 12+ month marketing campaign occurring throughout the base year of assessment, with multiple interested parties, and culminating in a final purchase / sale agreement is compelling evidence of the market value of the property. The Board was not persuaded by the Respondent's cost approach estimates of value, which are subjective with respect to classification and effective age, and failed to include a market related depreciation analysis to support the absence of additional depreciation.

Notwithstanding the above, the Board is not prepared to accept \$47,000,000 as the market value of the property on the valuation date, as there was insufficient evidence to demonstrate that the market was unvarying between the legislated valuation date of July 1, 2010, and the February 2011 agreement for sale. Further, the Board acknowledges that the transaction remains pending, and this evidence is therefore given less weight by the Board.

Issue 5.

The Complainant argued that the assessment of the subject property was inequitable to that of other industrial properties. In support of the argument, the Complainant provided the assessment attributes of five, SE industrial properties ranging in size from 608,238 sq.ft. to 848,951 sq.ft. The properties are assessed at rates per sq.ft. ranging from \$64 to \$76 per sq.ft. in contrast to the subject property's assessment at \$89 per sq.ft. Although the properties have higher site coverage ratios than the subject as a result of their smaller parcel sizes, the Complainant argued that the subject has an effective site coverage similar to the comparables as a result of a large pond that renders a portion of the 45.02 acres undevelopable. [C1, p.119]

The Complainant also argued that other "mega warehouse" improvements exhibit depreciated replacement cost values significantly lower than that of the subject. In support of the argument the Complainant provided three Marshall & Swift summary reports detailing the cost data details of a multi building property located at 6075 86 Ave SE, exhibiting a range of depreciated replacement cost values from \$47.87 to 49.33 per sq.ft. in contrast to the subject's cost value of \$67.32 per sq.ft., and the Respondent's recommendation at \$56.26 per sq.ft. [C1, pp.145-152]

The Respondent provided the assessment attributes of twenty eight multi tenanted industrial properties, ranging in size from 142,672 sq.ft. to 419,466 sq.ft., and exhibiting assessments ranging from \$73 to \$123 per sq.ft. The median assessment of \$91 per sq.ft. corresponded to a 163,554 sq.ft improvement, constructed in 2000, with a site coverage of 47.2%. The Respondent further provided the assessment attributes of nineteen single tenanted industrial properties, ranging in size from 146,780 sq.ft. to 972,242 sq.ft., and exhibiting assessments ranging from \$75 to \$122 per sq.ft. The median assessment of \$95 per sq.ft. corresponded to a 248,643 sq.ft. improvement, constructed in 2006, with a site coverage of 47.2%. Although the Respondent conceded that the properties were "not all that comparable", it was argued that they demonstrated an even distribution of assessed values amongst the properties most similar to the subject. [R1, p.176]

Decision: Issue 5

The Board finds that assessment of the subject property is inequitable in relation to the assessments of similar properties.

The Board was persuaded by the Complainant's large equity comparables that exhibit a range of assessed values from \$64 to \$76 per sq.ft., and specifically, the equity comparable located at 25 Dufferin Place SE common to both the Complainant's and the Respondent's evidence. This property is one year newer than the subject property with a site coverage ratio of 47.8% (in contrast to the subject at 39.1%), and is assessed at \$76 per sq.ft. in contrast to the subject property at \$89 per sq.ft. The Board does not find that the 8.7% site coverage ratio variance explains the \$13 per sq.ft. difference in assessed rates, as the property located at 5249 52 St SE, approximately the same age, with a site coverage ratio of 60.1% is assessed at \$73 per sq.ft.; only \$3 per sq.ft. less than 25 Dufferin Place SE.

The Board agrees that the remainder of the Respondent's equity comparables in R1 are dissimilar to the subject property; a point conceded by the Respondent.

Board's Decision:

The assessment is **revised** from: \$68,100,000 to: **\$54,060,000**

The Board finds that the Respondent's cost approach valuation does not recognize all forms of depreciation and therefore fails to meet the legislated standard of market value. Further, the Respondent's land valuation formula does not accurately predict market value for large industrial parcels of land, and therefore does not reflect the principle of diminishing returns.

The Board finds that the Respondent's recommended improvement assessment of \$40,565,300 plus the Board's finding of a \$400,000 per acre land rate, establishes an upper limit of value for the subject at \$58,573,300, less depreciation.

Without sufficient evidence to demonstrate that the market was unchanged between the legislated valuation date and the agreement for sale, the Board finds that the agreement for sale of the subject property at \$47,000,000, establishes a lower limit of value for the subject.

The Board finds the Complainant's income approach valuation of \$54,060,000 is the best evidence of the subject's market value before the Board, as the valuation is appropriately established and reasonably well supported by market evidence. Further, the value conclusion, equating to \$70 per sq.ft., is equitable in relation to the \$64 to \$76 per sq.ft. range of assessment values exhibited by the Complainant's similarly sized equity comparables.

DATED AT THE CITY OF CALGARY THIS

21st

DAY OF NOVEMBER, 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. C2a	Capitalization Rate Submission (Part 1)
3. C2b	Capitalization Rate Submission (Part 2)
4. C3	Rebuttal Evidence (1)
5. C4	Rebuttal Evidence (2)
6. C5	Nova Scotia (Director of Assessment) v. Van Driel
7. C6	MGB DL 025/05
8. C7	MGB 149/08
9. C8	ARB 0662/2010-P
10. C9	CARB 1292-2011P
11. C10	CARB 1495/2011-P
12. C11	CARB 1850/2011-P
13. R1	Respondent's Submission
14. R2	Marshall and Swift Summary Report (Recommendation)
15. R3	Assessment Review Board Decisions (33)
16. R4	CARB 1681/2011-P
17. R5	CARB 1824/2011-P
18. R6	CARB 1810/2011-P

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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Warehouse	Single Tenant	Cost v. Income Approach	Capitalization Rate Net Rent Rate