

**CALGARY
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:

Day & Ross Inc., as represented by Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

P. Pask, MEMBER

D. Steele, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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:	200478519
LOCATION ADDRESS:	3800 Westwinds DR NE
HEARING NUMBER:	67690
ASSESSMENT:	\$8,830,000

This complaint was heard on the 20th day of September, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *C. Van Staden, Altus Group Limited*

Appeared on behalf of the Respondent:

- *K. Cody, City of Calgary*

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

[1] The following Complaints were heard during the week of September 18 through to and including September 20, 2012:

File No.	Decision No.	Roll No.	Address
68196	1825/2012-P	009023607	7912 10 ST NE
66805	1818/2012-P	009023706	7757 8 ST NE
67649	1819/2012-P	031001894	3740 27 ST NE
68182	1824/2012-P	031024003	4300 26 ST NE
68179	1823/2012-P	031024300	4152 27 ST NE
68174	1822/2012-P	032041592	2415 PEGASUS RD NE
67690	1820/2012-P	200478519	3800 WESTWINDS DR NE
68115	1821/2012-P	200776896	2777 HOPEWELL PL NE

[2] **Common Issues:** The same Board members were in attendance throughout the week and the Parties were represented by the same individuals. Many of the issues, arguments, questions and responses were common throughout. At the request of the Parties and with the concurrence of the Board, those commonalities were carried forward from the hearing where they were first raised to subsequent hearings, without being restated in full in each hearing or in each written decision. For the purpose of this Complaint, common issues from File No's 68196, 66805 and 68182, and Decisions 1825/2012-P, 1818/2012-P and 1824/2012-P were carried forward.

[3] **S. 299, MGA:** In each of the Complaints, the Complainant referenced information related to s. 299 of the Act. In each case, the Complainant confirmed that there was no claim that the Respondent was in default with respect to the requested disclosure.

Property Description:

[4] The property under Complaint is a 10.43 acre parcel, located at 3800 Westwinds Drive NE in the Westwinds Industrial area. Its land use classification is Direct Control District. It contains one single-tenanted, owner-occupied warehouse, constructed in 2004 with a total assessable area of 41,677 square feet (sq.ft.) of which 37,417 sq.ft. is at grade and 4,260 sq.ft. is located on the mezzanine level. The total amount of finished space is 20 per cent; the site coverage is 8.23 per cent based on the footprint of the building and is considered to have 7.56

acres of extra land that could not be subdivided from the parcel. It is assessed using the Sales Comparison approach to value at \$212.06 per sq.ft.

Issues:

[5] Is the 2012 assessment too high when tested against the application of various valuation approaches, assessment tests and various restrictions registered on the Certificate of Title?

Complainant's Requested Value:

[6] The Complainant requested that the assessment be reduced to \$7,500,000 based, primarily, on the cost approach.

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

1. Assessment to Sales Ratio:

[7] The Complainant advised that she had extracted 164 sales of individual warehouses from the City's list of non-residential sales covering the period between July 2008 and June 2011. She also included a notation about and calculation of 29 sales of properties within the 25,000 to 49,999 sq.ft. range. From this data, she calculated the minimum, maximum, median and mean, time adjusted assessment to sales ratios. She identified the coefficients of dispersion and variation of these ratios. The Complainant contended that it is the position of the International Association of Assessing Officers (IAAO) that "the overall ratios between the various groupings" cannot be more than 5 per cent. The Complainant said that the analysis she performed indicated that the indicated ratios had exceeded that limit. The Complainant further quoted an IAAO document as follows: "... Ratio statistics cannot be used to judge the level of appraisal of an individual parcel".

[8] The entirety of the City's list of sales was in evidence but the Complainant's selected list and analysis were not. Without the analysis that supports the Complainant's conclusions, it is not possible to form an opinion on the results.

[9] In any event, it is not the Board's role to rule on the validity of the Respondent's asset range. *Matters Relating to Assessment and Taxation Regulation* AR 220/2004 (MRAT), s.10 in particular, governs the quality standards and procedures established through the Alberta Assessment Quality Minister's Guidelines and s. 293 of the Act.

[10] The Complainant's position on the assessment to sales ratio carried little weight in the Board's deliberations on the merits of the Complaint.

2. Sales Comparison:

[11] The Complainant provided four sales comparables in her C1 submission. The one at 2559 29 St. NE was selected by her as the closest to the subject. The assessable building area is very close to the subject but the majority of the other key factors are quite dissimilar,

importantly in terms of site coverage and, therefore, extra land. Other sales introduced during Rebuttal were properties that had larger land areas but much smaller buildings. The Complainant acknowledged that the sales presented were much different from the subject and considerable adjustment would be required to bring them closer for comparison purposes.

[12] The Complainant did acknowledge that the extra land was used in the operations that were carried out on the premises both in turning movements and for parking and the Respondent referenced the aerial photographs of the property to note that the extra land is being used and clearly has value to the business

[13] The Complainant also charted the four properties on p.15 of C1 and included an "Adjustment Summary" which, despite an additional explanation requested by the Board, was not comprehensible either in its calculation or its results.

[14] The Respondent provided two sales, both from the south-east rather than the north-east quadrant of the City. Neither of the sales had documentary support although one was included in the Complainant's Rebuttal and supported there. Again, building areas were too dissimilar to draw a good comparison to the subject.

[15] In reviewing the merits of the Complaint based on the Sales Approach, the Board found that the sales presented by the Complainant were not reliable indicators of value.

3. Income Approach:

[16] Because the subject property is owner occupied, the Complainant's Income Approach was calculated using market rent rates of \$6.00 and \$6.50 per sq.ft. and a vacancy rate, for both, of 5 per cent and a capitalization rate (cap rate) of 7.50 per cent. Using the City's land rates the Complainant added \$4,541,222 to the Indicated Value to account for the extra land. The Complainant acknowledged that she did not place a lot of weight on the Income Approach to value although it was a better indicator than using the Sales Comparison Approach.

[17] The requested cap rate was derived from the sales of four properties over 100,000 sq.ft., two of which are located in the north-east and two in the south-east. The sales are supported by RealNet, and/or Alberta Data Search and/or Land Titles Transfer documentation.

[18] The Complainant used actual rent rates at the time of sale for each property. The supporting rent rolls are partly redacted, or incomplete, or charted and are not the actual roll. The Complainant also showed rent rates in the area and summarized these on p.123 of C1. These leases included properties at the Calgary International Airport. The Respondent contended that these were not typical in that the land is owned by the Airport and leased to the developer of the building who, in turn, leases the space to a tenant. She said the rents are structured differently than they would be in a typical warehouse situation but had no documentation to support that assertion other than a written statement in R1 at page 68 and two Business Assessment decisions.

[19] The Complainant then applied a typical vacancy rate of 4 per cent based, it appears, on third party reporting of city-wide averages. However, in calculating the Net Operating Income (NOI) for the subject, the Complainant used either a 5 per cent vacancy rate as opposed to the 4 per cent rate used in formulating the overall cap rate. She stated that she knew the rate is

higher in the north-east.

[20] The cap rate analysis did not seem to account for other factors that would normally be used in generating an (NOI).

[21] It is the Board's opinion that there must be consistency between the way a rate is formulated and the way that it is applied to the property under Complaint. In this case, the Complainant has not shown that the cap rate study is properly supported, nor has she demonstrated that it has been consistently applied. The Board, therefore, places no weight on the proposed valuation derived from the Income Approach.

4. Cost Approach:

[22] The Complainant provided a summary report for the building using Marshall & Swift (M&S) and added a land value, discounted by 25 per cent for access constraints, using the City's land rates, to arrive at an assessed value of \$7,507,286. It was the Complainant's position that the Cost Approach was the best indicator of value given the extra land that required consideration.

[23] The detail of the inputs and calculations was not provided. The building input indicated 100% Storage Warehouse although the finished area, according to the City is 20 per cent. The Complainant averred that M&S allows between 3 to 12 per cent finished space within warehouses and that no further adjustment was required for office space except for the mezzanine office area which is roughly 10 per cent of the total assessable area.

[24] The Respondent noted that the Complainant's approach is arbitrary, doesn't necessarily reflect the finished area and doesn't correctly reflect the Marshall & Swift input parameters. Neither Party produced M&S documentation.

[25] In the absence of more detailed calculations and text from Marshall & Swift, the Board found that the Complainant had insufficient evidence to support the requested assessment. As noted below, the Board did not accept that an argument for restricted access had been made.

5. Title Restrictions:

[26] The Complainant provided a copy of the Certificate Title (Plan 0410759, Block 5, Lot 7) and two of the caveats, in favour of the City of Calgary, registered against it: specifically, Document 041089849 (849) which has restrictions as to access and Document 041089848 (848) which has restrictions with respect to a municipal overland drainage facility. The Complainant acknowledged that the caveats were in place and known by the owner at the time of purchase of the land. However, it is the contention of the Complainant that these restrictions adversely affect the market value of the property and are not properly addressed in determining its assessment for taxation purposes.

[27] Document 849 restricts access to and from Castleridge Boulevard NE and to and from Westwinds Drive NE. The land under Complaint does not abut Castleridge Boulevard. The relevant restriction in the caveat is to prohibit "unless otherwise approved in writing . . . the construction of a driveway and vehicular access to/from Westwinds Drive NE "over the bus pad

adjacent to the above described land . . . ". The Complainant stated that she believed that this prohibition constrained the number of accesses that the subject property was allowed to construct onto Westwinds Drive with a consequent negative impact on its value. The single existing access to the parcel is located north of the referenced bus pad as evidenced by the Complainant's pictorial evidence contained within her C1 submission and supported further by the Respondent's R1 submission which shows the location of the bus stops/pads in the immediate community.

[28] The Board finds that the evidence submitted by both Parties does not support the Complainant's contention that access to the parcel is restricted adjacent to Westwinds Drive NE and, consequently, the asserted adverse consequence with respect to access is not proven.

[29] Document 848 represents an overland drainage easement and restrictive covenant that was placed on title pursuant to the approval, by the City, of a subdivision that created the parcel under Complaint. The subject parcel is adjacent to municipal lands that benefit from this covenant which requires the owner of the subject lands to, among other things, construct and maintain an overland drainage facility through the easement area. The easement right-of-way and registered plan relating to this easement and covenant were not in evidence but it was the Complainant's contention that the easement runs along the east and south boundaries of the parcel. The Complainant also contended that the requirement to maintain the drainage works precludes access from the rear of the parcel to Westwinds Crescent NE. The pictorial evidence of both Parties supports the conclusion that well-defined drainage features abut the east boundary of the parcel along Westwinds Crescent; the infrastructure along the south boundary is not easily identified visually. The Complainant did not provide evidence of other, similarly burdened lands to show that the value of the property is negatively affected or to what degree.

[30] While the language of the restrictive covenant could be construed to allow an alteration to the drainage facility in order to permit, with the approval of the Municipal Engineer, the construction of access over it, that has not been tested or demonstrated as fact. The Board noted, and it was confirmed by the Respondent, that most industrial parcels do not have both front and rear access to roadways. The Board finds that any constraints associated with the restrictive covenant have not been shown to adversely affect the value of the land.

Board's Decision and Reasons:

[31] In reviewing the Complainant's Sales Approach argument, the Board concurred there were no good comparables that supported her requested assessment.

[32] While the Board does not rule on one valuation method over another, it recognizes that the Cost approach is generally applied to special purpose buildings not, as in this case, very standard and typical warehouse properties. Regardless of how that issue might have been determined, the evidence advanced on the costing of this property was not sufficiently supported, given the issues raised by the Respondent.

[33] As noted above, the Complainant was not able to challenge the assessment on the Income approach. The Board takes its guidance from *Westcoast Transmission Company Limited v. Assessor for Area 9 (Vancouver)* 1987 BCSC 235 which says, in part:

"I stated above that the concepts used, in developing capitalization rates for application to the

subject, should be used consistently. Thus it makes no sense to develop a capitalization rate on one set of assumptions about long-term vacancy rates, long-term rents, and long-term expenses, and then apply that rate to the income of the subject property that is not derived in the same way.

The choice of a vacancy rate goes directly into the calculation of gross income, from which the appraiser then deducts expenses to arrive at an estimate of net income. All of these factors, for consistency, should be used in the same manner as they were used in the study of comparables which resulted in the development of the capitalization rate. To do otherwise is to offend appraisal theory, and is likely to produce a mistaken result."

[34] In any of the valuation approaches used to contest the assessment, the Board placed no weight on the title restrictions. From the evidence of the documents, it is clear there was no barrier to access to Westwinds Drive NE as a result of the caveat. While the restrictive covenant with respect to drainage may place a burden on the owner, it is not a burden that was documented either with costs or with market evidence.

[35] Finally, although not documented above, the Complainant raised the argument that, once the Complainant has established a *prima facie* case, the onus shifts to the Respondent – that the Complainant is only required to cast doubt on the assessment and is not required to prove what the correct and equitable assessment should be. The Complainant also stated that unless the Respondent provides direct proof that the Complainant's evidence is in error then it is deemed to be correct.

[36] The Board has difficulty accepting the latter part of this argument but that is not relevant here. What is relevant is that, in the Board's opinion, the Complainant did not establish a *prima facie* case. Accordingly, the Complaint failed.

Board's Decision:

[37] The 2012 Assessment is confirmed at \$8,830,000

DATED AT THE CITY OF CALGARY THIS 16 DAY OF October 2012.



S. Barry
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. C2	Complainant's Rebuttal
4. C3	Complainant's Legal Argument and Closing Summary

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.*

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Decision No.: 1820/2012-P		Roll No.: 200478519		
Subject	Property Type	Ppty Sub-type	Issue	Sub-Issue
CARB	Warehouse	Single-Tenant	Sales Approach	Cost, Equity, Income, Access and Drainage Restrictions