

**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:

***Maria Magdalena Ingeborg Ellwanger, 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:	032041592
LOCATION ADDRESS:	2415 PEGASUS RD NE
HEARING NUMBER:	68174
ASSESSMENT:	\$2,760,000

This complaint was heard on the 19th 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.

[4] **Confidentiality:** In all but one of the Complaints, the Complainant, in writing by way of the transmittal page on the various documents, stated that there were pages within those submissions that were confidential and that "MUST remain out of the public domain." The Board advised the Complainant that Complaint Hearings are public hearings and that there was no mechanism in place by which some documentation could be kept from the public domain unless the Complainant did not enter it into evidence. In all cases, the Complainant chose to submit the documents into evidence in support of the Complaint

Property Description:

[5] The property under Complaint is a 1.52 acre parcel, located at 2415 Pegasus Rd. NE in the Pegasus Industrial area. Its land use classification is Industrial General (I-G). It contains one single-tenanted warehouse, constructed in 1985, with a total assessable area of 16,434 square feet (sq.ft.) of which 12,456 sq.ft. is at grade and 3,978 sq.ft. are on the mezzanine level. The total amount of finished space is 50 per cent; the site coverage is 18.84 per cent based on the footprint of the building and is considered to have 0.57 acres of extra land that could not be subdivided from the parcel. It is assessed using the Sales Comparison approach to value at \$168.19 per sq.ft.

Issues:

[6] Is the 2012 assessment too high when tested against the application of various valuation approaches and assessment tests?

Complainant's Requested Value:

[7] The Complainant requested that the assessment be reduced to \$1,930,000 based on the Income Approach at \$118 per sq.ft.

Board's Decision in Respect of Each Matter or Issue:**1. Income Approach:**

[8] The Complainant's request for an assessment of \$1,930,000 is based on the Income Approach using actual rent rates of \$8.25 per sq.ft., a vacancy rate of 5 per cent and a capitalization rate (cap rate) of 7.75 per cent. To the resulting indicated value, the Complainant added an amount of \$271,411 based on her calculation of the additional 0.57 acres of land value.

[9] 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. The Board noted that the subject site is considerably smaller than those used in the cap rate study.

[10] 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.108 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 previous R1 documents submitted for previous hearings in this week and carried forward by agreement as per para 2, above.

[11] 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 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.

[12] The Board noted that the cap rate study produced in the Complainant's C1 document is identical to the study produced for the Complaints heard immediately prior to the subject. In those cases, the cap rate study had been used to support a cap rate of 7.5 per cent but was now being used to support 7.75 per cent for this property. The Complainant advised the change was a subjective position.

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

[14] 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 or appropriately applied. The Board, therefore, places no weight on the proposed valuation derived from the Income Approach and, accordingly, will not deal with the land value issue.

2. Sales Comparison:

[15] The Complainant provided three sales comparables. The one at 2801 18 St. NE was selected by her as the closest to the subject. The assessable building area is somewhat larger and the parcel size is somewhat smaller resulting in a slightly higher site coverage of 24 per cent. It has 6 per cent more finished area and is older by five years. It is also designated as a multi-tenant building whereas the subject is designated as a single-tenant building. The time adjusted sale price is shown as \$110 per sq.ft. but there is no documentation to support the 2010 sale nor was there an assessment report for the Board to review. The Board found that the other two comparables were too dissimilar from the subject to warrant consideration.

[16] The Respondent provided four sales, of which the one most comparable to the subject at 150 Country Hills Blvd appeared to be in the north-west, not the north-east quadrant of the City. The Complainant also challenged one at 4413 11th St. NE as a suspect sale as there was a vendor take back mortgage and the mortgage amount was also higher than the sales price. The Respondent's equity comparables were not close enough to the subject to be helpful.

[17] In reviewing the merits of the Complaint based on the Sales Approach, the Board found that the lack of support for the one comparable that appeared to be reasonable weighed against a serious challenge to the assessment.

3. Cost Approach:

[18] The Complainant provided a summary report for the building using Marshall & Swift (M&S). The building was classified as 100% Storage Warehouse. An area of 3,960 sq.ft. for the actual mezzanine office was added and an additional mezzanine office area of 5,582 sq.ft. was

also added to capture the main floor office space. The detail of the inputs and calculations was not provided nor was any amount for land value included.

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

[20] Because of the incomplete calculation and 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 using this approach to value.

Board's Decision and Reasons:

[21] 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."

[22] In reviewing the Complainant's Sales Approach argument, the Board found that the property that was deemed by her to be the best sale was not adequately supported either with sales or assessment documentation. Given the issue of additional land, the Board could not make an informed determination of its comparability to the subject.

[23] 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. Additionally, the Board noted that the Cost approach did not include a calculation for land value.

[24] 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.

[25] 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:

[26] The 2012 Assessment is confirmed at \$2,760,000

DATED AT THE CITY OF CALGARY THIS 12 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.*

For MGB Administrative Use Only

Decision No.: 1822/2012-P		Roll No.: 032041592		
Subject	Property Type	Ppty Sub-type	Issue	Sub-Issue
CARB	Warehouse	Single Tenant	Sales	Income, Sales, Cost, ASR, Confid, s.299