

**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:

Westpen Properties Ltd., 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: 031024300

LOCATION ADDRESS: 4152 27 ST NE

HEARING NUMBER: 68179

ASSESSMENT: \$10,940,000

This complaint was heard on 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 5.15 acre parcel, located at 4152 27 St. NE in the Horizon Industrial area. Its land use classification is Industrial General (I-G). It contains one multi-tenanted warehouse, constructed in 2001, with a total assessable area of 97,105 square feet (sq.ft.). The total amount of finished space is 12 per cent. It is assessed using the Sales Comparison approach to value at \$112.71 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 \$9,030,000

Board's Decision in Respect of Each Matter or Issue:**1. Assessment to Sales Ratio:**

[8] 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. 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".

[9] 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.

[10] 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.

[11] 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:

[12] The Complainant provided four sales comparables. The one at 2305 22 St. was selected by her as the closest to the subject but noted that it would require an adjustment for size. The

building is somewhat smaller and the parcel size is considerably smaller. It was sold in 2008 but no documentation of the sale was provided by the Complainant. It was assessed at \$98 per sq.ft. The Complainant suggested that, when adjusted, a rate of \$93 per sq.ft. would be appropriate but did not provide any support for that adjustment. Applying the requested rate of \$93 to the subject property produces an assessment of \$9,030,765.

[13] At the hearing of File 68182, Decision 1824/2012-P, held immediately prior to the subject hearing, the Respondent provided evidence of a sale of the property adjacent to the one that is now under complaint. That sale occurred within 10 days of the July 1, 2011 valuation date. The two properties that were conveyed in that sale were the subject of the previous hearing and the subject of this Complaint. Together, they sold for a total of \$25,600,000. The owner's agent responded to a City Sales Questionnaire and declared that the adjacent parcel traded for \$11,300,000 and declared that it was an arms-length transaction. As noted in paragraph 2, above, this evidence was carried forward with the consent of the Parties. The Sales Questionnaire for the subject property was not in evidence and the Board was left to conclude that the residual sales value, that is the sales value for the subject property, was \$14,400,000.

[14] The Respondent also noted that one of the Complainant's comparables, 925 28 St. NE, was a non-arms length sale and therefore invalid. This was evidenced in the Sales Questionnaire returned by the purchasers in February 2011 and through the Corporate Search conducted by the Respondent and documented in R1.

[15] The Complainant also charted the four properties on p.14 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.

[16] In reviewing the merits of the Complaint based on the Sales Approach, the Board found that neither Party identified good comparables and, without documentation, the Board could only take passing regard to the sale referenced in para 13, above. However, there was insufficient merit in the Complainant's materials to support the request or contest the assessment.

3. Equity Approach:

[17] The Complainant provided three equity comparables, including the subject of Decision 1824-2012/P which was similarly assessed. Both Parties provided a reasonable equity comparable at 4303 26 St. NE. The building is of similar size to the subject but the parcel is somewhat smaller; site coverage is a little higher but both are IWM and year of construction for both is 2001. The assessment for this equity comparable is slightly less than the subject and supports the assessment given the minor differences.

[18] Neither Party provided supporting documentation for the buildings included in the equity analysis. The Board was not able to determine from the written documentation if the Complainant made any adjustments to these comparables as in previous equity arguments. As presented, equity tends to support the assessment.

4. Cost Approach:

[19] The Complainant provided a summary report for the building using Marshall & Swift (M&S) and added a land value using the City's rates to arrive at an assessed value of \$9,322,598, very close to the Sales Comparison approach requested by the Complainant. The detail of the inputs and calculations was not provided. The building indicated 100% Storage Warehouse. The Complainant averred that M&S allows between 3 to 12 per cent finished space within warehouses and that no adjustment was required for office space.

[20] 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.

[21] 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.

5. Income Approach:

[22] The Complainant's request for an assessment of \$9,030,000 is based on the Income Approach using a rent rate of \$7.00 per sq.ft. which, because of high vacancy in the subject, is based on a rent rate from the adjoining building as well as the subject. The Complainant used a vacancy rate of 0 per cent and a capitalization rate (cap rate) of 7.50 per cent.

[23] 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.

[24] 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.112 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 78 and two Business Assessment decisions.

[25] 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 or 0 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.

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

[27] 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.

Board's Decision and Reasons:

[28] In reviewing the Complainant's Sales Approach argument, the Board found that the property that was deemed by her to be the best sale actually supported the assessment.

[29] 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 closely mirrored the actual assessment.

[30] 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."

[31] 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.

[32] 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:

[33] The 2012 Assessment is confirmed at \$10,940,000

DATED AT THE CITY OF CALGARY THIS 11 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 Document
4. C3	Complainant's Legal Argument and Summary Comments

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.: 1823 2012/P		Roll No.: 031024300		
Subject	Property Type	Ppty Sub-type	Issue	Sub-Issue
CARB	Warehouse	Multi-tenant	Sales Comp	Income, Equity, Cost, ASR, s.299, Confid