

**CALGARY
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:

Gruene, Markus (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

B. Horrocks, PRESIDING OFFICER

M. Grace, MEMBER

B. Jerchel, 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: | 115054405 |
| LOCATION ADDRESS: | 8203 31 ST SE |
| HEARING NUMBER: | 63849 |
| ASSESSMENT: | \$1,690,000 |

This complaint was heard on the 17th day of Aug., 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- Mr. J. Smiley (Altus Group Limited)

Appeared on behalf of the Respondent:

- Mr. I. Baigent

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

There were no concerns with the composition of the Board.

There were no preliminary matters. The merit hearing proceeded.

At the outset, it was agreed that all evidence and argument with respect to the Complainant's Disclosures (C-2) Industrial Capitalization Rate Analysis 2011 Assessment Year and (C-3) Tab 7 from Hearing # 62886 would be carried forward to this hearing.

Property Description:

The subject property is a 0.74 acre parcel located in the Foothills Industrial Park in SE Calgary. The site is improved with a 11,250 square foot (SF) multi-tenant warehouse that was constructed in 1973 with site coverage of 34.86% and finish of 15%. The subject is assessed at a rate of \$151.00 per SF using the Direct Sales Comparison Approach to Value.

Issues:

The Assessment Review Board Complaint Form contained the following statements:

1. "The assessment of the subject property is in excess of its market value for assessment purposes.
2. The municipality has applied the incorrect valuation methodology when calculating the assessed value of the subject property.
3. The valuation method used for the subject property is fundamentally flawed in both derivation and application.
4. The direct sales comparison approach used by the City has included sales that should not be considered in determining the market value of the subject property", amongst other things.

Complainant's Requested Value: \$1,160,000

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

The Complainant argued that there are not enough sales of properties with comparable characteristics in order to reliably determine the value of the subject, and further that an Income approach using typical information, all of which is readily available, is a suitable method for estimation of value. The Complainant advised that the City of Calgary provided a list of sales (154) for the period July '07 to June '10 which it used in its model to determine the assessed value for the industrial inventory. Through the use of a table on page 7 (C-2), the Complainant demonstrated that over the 18 months prior to the valuation date (July 1, 2010), there was a very limited amount of sales (56) within even the most basic size strata, and further there were only 21 sales in the base year. In the alternative, the Complainant submitted the Income Approach to Value is a better method of estimating value.

The Board notes that the goal is to achieve the objectives of ss.2 and 3 of Matters Relating to Assessment and Taxation Regulation, AR 220/2004 (MRAT). The Respondent presented several decisions of the Municipal Government Board (MGB), CARB and the Courts, which do not need to be recited here, that respect the right of the Respondent to use the method it deems more appropriate. The Board notes that this does not preclude the Complainant from demonstrating that a different approach may result in a more accurate market value or a more equitable assessment.

In support of its use of the Income Approach, the Complainant provided Industrial Cap Rate Analysis 2011 Assessment Year labelled (C-2). The Board's decision on the utility of the Analysis is dealt with in CARB 1822-2011-P with respect to Hearing 62886. The Board's analysis is carried forward and applied in this decision.

In its Analysis, the Complainant uses a 5% Vacancy rate which is taken from an aggregate of market publications, submitting that it represents a city wide average and can be applied to sales and assessments city wide.

In its Analysis, the Complainant selected only the 8 sales that occurred between January 2009 and July 2010 where actual income could be verified, excluding atypical properties and leasebacks. The properties were then stratified by 2 age categories, vis a vis, pre and post 1995. After analysis, the Complainant concluded that the Cap rate for pre 1995 industrial properties was 8.25% and the Cap rate for post 1995 industrial properties was 7.75%.

The Respondent submitted that the Complainant's Cap Rate Analysis cannot be relied upon and that Decisions of other CARBs had rejected the use of the same Analysis. These decisions are partially summarized as follows:

1. CARB 0859/2011-P "The sample size of sales that supported the study was quite limited and did not generate the degree of confidence the Board would want in order to accept the Study results as appropriate for determining market value on each of the properties under complaint."
2. CARB 1014/2011-P "The Board does not accept the Claimant's "cut-off" date of 1994 as being the demarcation line between a 7.75 and 8.25 per cent capitalization rate. The date is simply too arbitrary, and does not reflect typical market behaviour".

In addition, the Respondent noted that in the development of the Cap Rate the Complainant had used actual leases in place, and market lease rates (typical) where spaces were identified as vacant.

The Board finds the Complainant's Cap Rate Analysis methodology flawed and the conclusions derived therein unreliable.

Issue Market Value

The Complainant's Disclosure is labelled C-1.

The Complainant, at page 12, utilized the 2011 Assessment and worked backwards to arrive at an "implied rent rate" of \$13.05 per SF. The Complainant submitted the rent rate of \$13.05 per SF was too high and provided the actual lease rate of \$9.00 per SF from the rent roll. The Complainant said there are a significant number of recently transacted deals, and because of the rarity of such small bay sizes in this locale in a building of this vintage and with these characteristics, the actual recent income is the best indication of typical for this property.

The Complainant then utilized the Income Approach to Value with the parameters of \$9.00 per SF for rent rate, Vacancy rate of 5%, and a Cap Rate of 8.25% (from the Cap Rate Analysis), to arrive at an indicated value of \$1,165,909 (\$104 per SF).

The Respondent's Disclosure is labelled R-1.

The Respondent, at page 125, provided 2011 Industrial Equity Comparables which contained 7 Equity Comparables with assessments ranging from \$148 to \$165 per SF, noting the subject was assessed at \$151 per SF.

The Respondent, at page 126, provided a table of 9 Industrial Sales Comparables with Time Adjusted Sales Prices per square foot (TASP/SF) ranging from \$171 to \$245. The Respondent argued that the Complainant's request for an assessment of \$104 per SF wasn't even in the range identified by the market.

The Complainant, in Rebuttal noted that only 2 of the Respondent's 9 sales comparables fell within an Assessment to Sales Ratio (ASR) range of 0.95 to 1.05.

The Board finds the market evidence submitted by the Respondent more persuasive.

Board's Decision:

The 2011 assessment is confirmed at \$1,690,000.

Reasons

The Complainant's Cap Rate Analysis is not reliable in that the calculation of the value of a property using the income approach uses some factors derived from actual data, and some factors derived from typical data.

The assessed value of the subject is within the range of market values for similar industrial properties.

DATED AT THE CITY OF CALGARY THIS 8 DAY OF SEPTEMBER 2011.


B. Horrocks
Presiding Officer

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

| NO. | ITEM |
|------------|------------------------|
| 1. C1 | Complainant Disclosure |
| 2. R1 | Respondent Disclosure |
| 3. C4 | Complainant Rebuttal |

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.*