

**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:

***Canadian Property Holdings (Alberta) Inc. (C/O CREIT Management),
(as represented by Altus Group Limited) COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

R. Kodak, MEMBER

A. Zindler, 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:	200205532
LOCATION ADDRESS:	5555 69 AVE SE
HEARING NUMBER:	61069
ASSESSMENT:	\$21,260,000

This complaint was heard on the 24th day of August, 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:

- D. Mewha, *Altus Group Limited*

Appeared on behalf of the Respondent:

- J. Young, *City of Calgary*

Board's Decision in Respect of Procedural Matters:

[1] The parties agreed before the Board that a series of hearings, including the subject property was scheduled to be heard during the week of August 22, 2010. The Complainant utilized the Income Approach to Value for the purpose of arriving at market value for assessment purposes. The Complainant proposed to present their determination and application of their capitalization rate along with evidence and arguments before the Board once within the File Number 61080 and subsequently carry forward said evidence and arguments to all affected properties scheduled for that week. All parties agreed to this approach. It should be noted that during his presentation the Respondent raised the issue of rejecting the Complainant's Capitalization Rate Study. After some discussion the respondent withdrew his request.

[2] The Respondent requested a new assessment value during his presentation [Exhibit R-1, p.128] of \$28,356,608 based on his equity comparables. The Complainant objected. Subsequently, the Respondent withdrew his new assessment value request found in Exhibit R-1 under "City of Calgary Equity Comparables" for this hearing and all other hearings, where applicable, scheduled to be heard during that week.

Property Description:

[3] The subject property is assessed as having 253,184 square feet (sf) in one building. This multi-tenant industrial warehouse was constructed in 2002 on an 11.56 acre parcel in SE Calgary's Great Plains Industrial Park. Site coverage is 50.29% and Land Use designation is Industrial – General (I-G). There is 3% office finish. The sublease rate outlined in the tenant rent roll dated December 1, 2010 in Exhibit C-1, p. 16 is \$5.20 per sf. The assessed value of \$21,260,000 (\$84.00 per sf) was arrived at via the Direct Sales Comparison Approach to Value.

Regarding Brevity:

[4] The parties presented extensive evidence, some of which the Board found to be relevant, some less so. In the interests of brevity the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decisions reflect the evidence presented and examined by the parties before the Board at the time of the hearing.

Issues:

1. Is the Income Approach to Value the best method of assessment valuation for the subject property as of July 1, 2010?
2. Does the Complainant's Income Approach demonstrate the subject is valued in excess of market value?
3. Is the subject equitably assessed?

Board's Decision Regarding Each Issue:

[5] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. Evidence and argument were put before the Board by the Complainant to show the assessment is incorrect and to provide an alternative market value (\$16,360,000) as of July 1, 2010, being equivalent to \$65.00 per sf. The Board is to determine if, within the direction of the *Municipal Government Act (the Act)* and associated Regulations, it has been swayed to find the assessment is incorrect and if the assessment should be revised.

[6] With regard to the individual issues identified above, the Board's findings are as follows:

Question 1: Is the Income Approach to Value the best method of assessment valuation for the subject property as of July 1, 2010?

[7] The valuation standard applicable to the subject property is found under *Matters Relating to Assessment and Taxation Regulation 220/2004 (MRAT) Section 6*; that being market value. The *Act* and associated Regulations do not identify specific valuation method(s) for determining market value for the subject property.

[8] The Board is prepared to consider evidence pertaining to the determination of the subject property's market value as of July 1, 2010 with no prejudice for any valuation method employed by either of the parties. The methodology is not the important issue. The Board is concerned with the correctness of the end result.

Question 2: Does the Complainant's Income Approach demonstrate the subject is valued in excess of market value?

[9] The Complainant, Mr. Mewha, has provided an Income Approach valuation [Exhibit C-1, p.15] based on the following inputs:

Rent:	\$5.25 per sf
Vacancy:	5%
Capitalization Rate:	7.75%
Requested Value:	\$16,360,000 (\$65.00 per sf)

[10] The Complainant provided one chart [Exhibit C-1, p.15] with a heading of "Lease comparables" which analyzed twenty leases with start dates between February 2008 and November 2010. The chart includes one *post-facto* lease from the subject property. The net rent of the twenty leases ranges from \$4.85 to \$7.75 per sf with a 'median 2010' value of \$5.25 per sf, this being the foundation for the requested rate of \$5.25 per sf. The '2 year median 2009-

2010' was \$5.38 per sf and '3 year median 2008-2010' was \$5.88 per sf. The Board had difficulty in discerning the comparability of the leases given the lack of meaningful comparative information provided, with respect to each property, which affect value. These include site area, photographs, site coverage, degree of office finishing, property use and condition. The Board finds the use of *post-facto* data in deriving a 'median 2010' value of \$5.25 per sf to be inappropriate. Of the five 'median 2010' leases used in the analysis, four are *post-facto*. Removal of the four *post-facto* leases leaves only one comparable, hardly sufficient to provide a true value indicator.

[11] Mr. Mewha put forth an arbitrary and unsupported vacancy rate allowance of 5% applied in the Income Approach. The vacancy rate shown on the third-party reports differed from the 5% applied. Mr. Mewha did not provide any study or analysis in support of the applied vacancy rate. In addition, an explanation regarding the issue of non-recoverables was not in evidence.

[12] Mr. Mewha presented an Industrial Capitalization Rate Analysis [Exhibit C-2] in order to determine an appropriate rate for their Income Approach to Value. This analysis utilized eight market sales (see Table 1 following) that occurred between January 2009 and July 2010. The sales selected were chosen on the basis that he was able to obtain and verify the income data in place at the time of sale. Mr. Mewha segregated the eight sales as to year of construction, that is, pre-1995 construction and post-1995 construction. In the current Hearing he relied on the post-1995 sales, noting the subject was constructed in 2007. There are three sales in this group of which one, the sale of 10905 48 Street S.E., was part of a four-building industrial portfolio sale located in Calgary, Edmonton and Acheson; the Board rejects the inclusion of this sale. The remaining two sales relied on display the following sales data reported in Table 2:

Table 1 – Comparable Sales used in the Capitalization Rate Analysis

Index No.	Address	Sale Price	Sale Date	Rent Roll Area	Year of Construction	Site Coverage	Sale Price per sf
1	3700 19 St. NE	\$3,150,000	19-Jan-10	23,206	1977	26%	\$136
2	2115 27 Ave. NE	\$4,150,000	04-Nov-09	49,985	1980	34%	\$83
3	4301 9 St. SE	\$1,850,000	20-Apr-09	14,700	1964	37%	\$126
4	700 33 St. NE	\$6,000,000	30-Oct-09	59,573	1977	38%	\$101
5	303 58 Ave SE	\$8,750,000	20-Apr-10	121,375	1970	42%	\$72
6	4100 Westwinds Dr. NE	\$25,825,000	18-Aug-09	302,135	2000	44%	\$85
7*	10905 46 St. SE	\$18,300,000	27-Apr-10	146,135	2008	43%	\$125
8	7007 54 St. SE	\$20,100,000	22-Jul-09	178,009	2009	43%	\$113
					Simple average		\$102 **
Subject	5555 69 AVE SE	\$21,260,000* (Assessment)		253,184	2002	61%	\$84
	Requested assessment	\$16,360,000		253,184	2002	61%	\$65 **

*Note: The Board rejects the inclusion of Index 7 (part of a portfolio sale – see comments).

** Excluding Index 7

Table 2: Complainant's sales having post-1995 year-of-construction. [Exhibit C-2, p. 20]

Index	Address	Year-of-Construction	Rent Roll Area (sf)	Sale Date	Sale Price	Sale Price per sf
6	4100 Westwinds DR NE	2000	302,135	August 2009	\$25,825,000	\$85.48
8	7007 54 ST SE	2009	178,009	July 2009	\$20,100,000	\$112.92
					Simple Average	\$99.20
	Subject Assessment	2002	253,184		\$21,260,000	\$83.97
	Requested Assessment	2002	253,184		\$16,360,000	\$64.62

[13] In the determination of the requested capitalization rate of 7.75%, Mr. Mewha calculated the Net Operating Income for Index 6 using a rental rate of \$6.65 per sf and for Index 8 a rental rate of \$9.25 per sf. The Board considers the two properties relied on by Mr. Mewha, reported in Table 2 as Index 6 and 8, to not be particularly comparable unto themselves. Further, should they be comparable then the sale price and applied rental rates should also be comparable – they are not. Nevertheless, Mr. Mewha says they are but did not explain in any meaningful way how he got from an average sale price of \$99.20 per square foot to the requested value of \$64.62 per sf.

[14] The Board finds it inappropriate in the development of a capitalization rate to base such calculations on dissimilar rental incomes, i.e.: \$6.65 and \$9.25 per sf. Using higher incomes based on lease rates of \$6.65 and \$9.25 will necessarily result in a high capitalization rate. Mr. Mewha then used a lease rate of \$5.25 in determining the subject net operating income. The result of a high capitalization rate and a low lease rate will be a low capitalized value. Should the two sales properties and the subject be comparable, then the capitalization rate should have been determined consistently using the same lease rates to both determine the capitalization rate and the same lease rate applied to the subject to determine its net operating income. The Board finds Mr. Mewha's mathematics to be flawed.


Question 3 - Is the subject equitably assessed?

[15] The Complainant placed less emphasis in their presentation on the question of equity. Upon review of both parties evidence regarding this issue, the Board determined the Respondent provided a more thorough analysis including key parameters which would establish whether the properties were truly comparable. Age of the improvement and site coverage were two examples. The Board was not convinced that the assessment was inequitable.

[16] There was considerable testimony and argument surrounding the issue as to the most appropriate approach to value. Given the evidence provided, as well the characteristics of the subject property, the Board was not persuaded by the evidence and the flawed Income Approach analysis as put forward by the Complainant.

[17] Accordingly, the arguments advanced by Mr. Mewha fail and the assessment is confirmed at \$21,260,000.

DATED AT THE CITY OF CALGARY THIS 6th DAY OF October 2011.



R. Kodak
Member



A. Zindler
Member

Dissenting Opinion by panel member S. Barry:

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

NO.	ITEM
C-1	Complainant's Disclosure
R-1	Respondent's Disclosure
C-2	Complainant's Industrial Capitalization Rate Analysis
C-3	Complainant's City ARFI'S / Response to City ARFI'S
C-4	2011 Rebuttal Evidence for Multiple Rolls - Aug. 22, 2011
C-5	2011 Rebuttal Evidence for Multiple Rolls - Aug. 8, 2011
C-6	Long Term Capitalization Rate Trending Comparison

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.*

Between August 22 and August 25, 2011 the Board heard six Complaints that were all affected by common issues. Where appropriate, the evidence documents, argument, questions and responses were carried forward, at the request of the Parties, to all the complaints. The Dissenting Decision with respect to two of those issues applies to the following:

<u>Decision No.</u>	<u>Roll No.</u>	<u>File No.</u>	<u>Address</u>
1934/2011-P	200787885	61080	5667 69 Av S.E.
1932/2011-P	200205532	61069	5555 69 Av S.E.
1935/2011-P	117010108	61106	5353 72 Av S.E.
1933/2011-P	200787877	61079	5664 69 Av S.E.
1936/2011-P	200101673	61110	6969 55 St S.E.
1942/2011-P	117007104	64402	8087 54 St. S.E.

DISSENT ON COMMON ISSUES:

1. **Respondent Request to Exclude Evidence:** This issue was not fully addressed in the Majority Decision. The writer believes that this was a key component of the discussion that affected all the complaints and raises it here for that reason.

The request to exclude Altus's "Industrial Capitalization Rate Analysis 2011 Assessment Year" (Cap Rate Study or, the Study) was not made as a Preliminary matter but was raised on p.9 of the Respondent's Assessment Brief. However, the Respondent also said, directly, that he was not actually making that request but noting only that with all the evidence being, in his opinion, the same as at previous hearings and with nothing having changed, then the outcomes – in this case the decisions on this group of complaints – should be consistent with previous decisions. However, upon questioning by the Complainant, the Respondent once again said he was requesting that this document be excluded. The Complainant noted that his Rebuttal document dealt with this issue and requested that pp 1-5 of C4 stay on the record as his opposition to the Respondent's request. The Respondent replied that the wording in his brief was poor and misleading and again stated that there was no request to exclude the Study from consideration by the Board. The Respondent's position was inconsistent and confusing; in any event, the Board accepted the Cap Rate Study into evidence. The decision to accept it did not, at that time, presuppose the validity of the Study.

2. **Validity of Cap Rate Study:** It was the Complainant's contention that the Income Approach to Value was the best indicator of market value for industrial warehouses and, in support of his arguments on the individual complaints, produced the Cap Rate Study to support his calculations. The Respondent challenged the Study on a variety of grounds and this member decided that if she were to consider the income approach on the various complaints, it was necessary to determine, from the outset, the validity or acceptability of the Study.

It is this Board Member's position that accepting the validity of the Study does not automatically mean that the Income Approach is the best estimate of market value in each of the Complaints under consideration. That issue should be decided on a review of the individual set of facts. Rather, accepting the Study at this point means that, if a decision in support of the Income Approach were to be made in any of the Complaints, then a tool would exist, specifically a capitalization rate, by which the market value could be calculated. The point of having an appeal or complaint process is to allow the taxpayer an opportunity to challenge the assessment. If one of the tools developed by the Complainant is reasonable, then it should be admitted as a consideration when the Complaints are being decided on their own merits. For the following reasons, this member finds that the Study is a reasonable tool, reasonably crafted, that can be used to evaluate the market value of the subject properties.

The Complainant extensively referenced the "Market Value and Mass Appraisal for Property Assessment in Alberta: Valuation Guide, Warehouses" to support elements of his methodology. For example, stratification as to size and age are among the relevant characteristics and, similarly, cites "The Appraisal of Real Estate Canadian Edition, 1992" in support of selecting comparables for the Study that most closely approximate the appraisal date, in this case the valuation date of July 1, 2010, in order that the least number of adjustments is required. In support of the sample size, the Complainant concurred that a list of 154 sales, used by the City in its model, was published by the Respondent; however, only 56 of those sales occurred between January 2009 and June 2010. Of those, only 21 sales occurred in 2010. Of that number three fall within the 25,000 to 50,000 sq.ft. size range, none are within the 50,000 to 100,000 sq.ft. range or in excess of 250,000 and only 2 fall within the 100,000 to 250,000 sq.ft. size range. Of the six complaints to be decided in this set of hearings, only one is less than 50,000 sq.ft.

The Complainant's Cap Rate Study is summarized in tabular form on page 20 of evidence package C2. Of the eight properties, all were sold between April 20, 2009 and April 27, 2010. Only the earliest sale would require a very minor adjustment for time, or market conditions. Under these circumstances the sample size seems reasonable, especially since the Complainant must also access rent rolls and is limited in the number of properties for which he can obtain this information. The City has changed its approach to valuation and rent roll or Assessment Request for Information (ARFI) records are no longer available to complainants for most warehouse properties. All of the sales that were used in the Study are documented in the Complainant's evidence submissions and Altus's evidence was that they had verified the income in place at the time of sale. With respect to the one sale rejected in the majority decision -10905 48 St.- this Member notes that the Respondent agreed that it does incorporate portfolio sales when the value attributed to the separate premises can be independently verified. The Complainant has provided a copy of part of the Land Titles transfer document establishing the sales price for this particular property at \$18,300,000 and the City has, in fact, used it as one of its sales comparables for one or more of the Complaints that are noted above.

Stratification by year of construction is demonstrated in the Study which, this Member concurs, may not have a sufficiently large sample size to demonstrate conclusively that 1995 is an appropriate break. However, of the six complaints to be decided, all are newer than 1995, in fact all were constructed no later than the year 2000, and it seems quite clear from the study that the requested cap rate is supported.

The Complainant has advanced the following methodology in developing the Cap Rate of 7.75%. First, he found sales that were closest to the valuation date and for which he could validate income at time of sale. The net actual lease rates were used and where there were vacancies, these were calculated as fully leased with the applicable rent. Rents were supported with rent rolls. Vacancy was typical, based on third party reports, at 5 per cent, which amount incorporated non-recoverable expenses. Third party reports are not regarded as the best primary source of data but in the size of sample available for review, represent a reasonable compromise. Colliers, for example, shows a second quarter 2010 report for Calgary industrial properties with an overall vacancy of 5.36 per cent. The properties in the Study evidenced low rates of vacancy but in looking to apply the Study to the Complaint properties, 5 per cent including non-recoverables seems both conservative and acceptable.

Finally, the Complainant referenced the City of Calgary's 2005 process for deriving cap rates. This process for Industrial Capitalization Rates is found on p.15 of C2 and, while the Respondent objected to using this as evidence since the approach to value has changed, it is buttressed by the City's Cap Rate Process for Retail in 2009. There is no difference in the methodologies: actual net rents as if fully leased; the application of typical vacancy and typical non-recoverable expenses.

To this Member's mind, this addresses the issue of consistency that has been raised. The Respondent City's processes allows for a mix of actual and typical inputs for developing Cap Rates. Further, in reading the case law provided by the Parties, this writer sees nothing that indicates that the methodology must employ all typical or all actual inputs in developing a cap rate study. Rather, my reading suggests that once a methodology has been developed and applied consistently to all the comparables that form the study, then the same methodology must be applied to the subject complaints: actual net rents adjusted for the same typical vacancy and non-recoverables and the application of the cap rate determined from the Study. If that methodology is not applied to the requested assessment for the six properties under complaint, then the income request will fail. But that has yet to be determined.

In summarizing his position, the Respondent referenced a large number of CARB and MGB decisions to support either rejecting the Study or determining that it was invalid. In particular he referenced decision 1340/2011-P (page 117 of R1) and said that this was his position on the Altus Study. This Member finds that relying almost exclusively on previous decisions to support his argument is not persuasive. Some

members of this Board did not participate in any or all of those decisions and did not have the benefit of seeing or hearing the evidence presented or of questioning the Parties. In any event, the Wesseling Board did not reject the Study out of hand but identified a number of issues with it; issues, I might add that were identified by this Member in a previous hearing she presided over in July of 2011, with the same result as the decision of Mr. Wesseling's panel, also in July of 2011. However, this Member also acknowledges that many of those issues were addressed by the Complainant during these hearings both in the documents and with oral argument.

DISSENT ON THE MERITS:

The Complainant provided a request for value of \$16,360,000 based on both the Income Approach and on Equity. The Respondent requested an increase in assessment based on Equity.

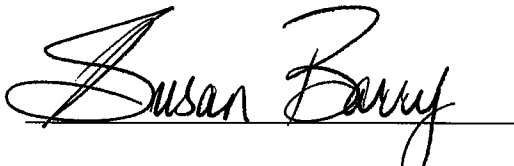
I will deal with the latter issue first. The request for an increase in assessment was not raised by the Respondent until near the conclusion of his presentation and request for confirmation. At that time he pointed to p.8 of R1, specifically para 4, in which the following statement appears: (will speak to) "A great number of equity comparables that demonstrate the even distribution of assessed values amongst the most similar properties to the subject. As well a look at the most similar equity comparables which support and (sic) increase to the assessment." On page 128 of the same document, at the bottom of the table of comparables, the Respondent has an additional line item that states "Subject New Requested Value" but which was not spoken to directly. The above-noted request was made in an off-handed way and it was not until questioned by the Board that the Respondent confirmed that he was asking for an increase. The Complainant objected and requested a preliminary decision by the Board, pointing to p.181 of the same document where the Respondent, in "Conclusion", requested that the assessment be confirmed. The Board ruled that the notation on page 8 is not a legitimate request for an assessment increase and the only appropriate way to address such a request is as a preliminary matter at the outset of the hearing and clearly identified in the Respondent's disclosure document; to do otherwise is to set an ambush for both the Complainant and the Board when considerable time has already been invested in the merit arguments. If the request is legitimate, then it needs to be clear and up front so that the Complainant can address it within the context of his Rebuttal.

This Member noted that the Respondent had not supported his Sales Comparables with documentation; nor are they good comparables to the subject. Two of the sales must be discredited from the outset – the Complainant was able to verify that the data had been transposed for 4141 110 Av S.E., and 11195 42 St. S.E. We were not able to determine how that might impact the model itself, but it certainly calls the table and its results into question. The Respondent said that the three most important indicators are size, year of construction and site coverage but none of the remaining properties in the Respondent's Sales Comparables on page 126 of R1, credibly approximate the property under complaint.

The Complainant's request for an income approach for the subject is consistent with the methodology established in the Cap Rate Study: Actual net rents of \$5.20 to \$5.25 on the three bays, on leases that run through the valuation period, with the application of 5% for combined vacancy and non-recoverable expenses and a cap rate, supported by the Study of 7.75% result in an indicated value of \$16,360,000. This analysis is reasonable and provided a better indicator of market value for assessment purposes than the Respondent's sales comparables.

The Respondent's best equity comparable was one that had already been discredited in the sales comparison table and we are not able to determine how that might have affected the assessment through the model process. The remaining closest equity comparable is located in a different industrial district; is smaller in parcel size, with a marginally older building; and a somewhat higher percentage of finish. The Complainant was not able to provide a good equity comparable.

This Member's decision on the merits would be to reduce the 2011 Assessment to \$16,360,000.



S. Barry, Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE PRESIDING OFFICER

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|-------|---|
| 1. C1 | Complainant's Disclosure |
| 2. C2 | Altus "Industrial Capitalization Rate Analysis 2011 Assessment
Year" part 1, pp. 1-253 |
| 3. C3 | Altus "Industrial Capitalization Rate Analysis 2011 Assessment
Year" part 2, pp. 254-384 |
| 4. C4 | Complainant Rebuttal for Multiple Rolls |
| 5. C5 | Additional Complainant Rebuttal for Multiple Rolls |
| 6. C6 | Long Term Trending Comparison with no Vacancy |
| 7. R1 | Respondent's Disclosure |