

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:

Kane Investment Corp. (as represented by Altus Group.)
COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Krynski, PRESIDING OFFICER
D. Morice, BOARD MEMBER
T. Livermore, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	054012505
LOCATION ADDRESS:	2916 5 Avenue, NE
FILE NUMBER:	72833
ASSESSMENT:	\$6,660,000

This complaint was heard on 9th day of July, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *M. Robinson*
- *D. Mewha*

Appeared on behalf of the Respondent:

- *K. Cody*
- *J. Young*

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

- [1] The parties had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the Hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

- [2] The subject property contains a multi-bay warehouse located at 2916 5 Avenue, NE, in the Franklin Industrial Park. The building has an assessed area of 66,977 square feet (sf), of which 69% is finished and the year of construction is 1979, The warehouse is situated on a 4.59 acre parcel of I-G zoned land, reflecting site coverage of 34%.

Issue # 1:

- [3] The assessment of the subject property is in excess of its market value.

Issue # 2:

- [4] The full amount of tax exempt space is not being recognized in the assessment.

Complainant's Requested Value: \$ 5,355,148 or alternatively, \$6,493,580

Board's Decision

- [5] The Board confirms the assessment at \$6,660,000.

Legislative Authority, Requirements and Consideration

- [6] The Calgary Composite Assessment Review Board takes authority from the Municipal Government Act and associated Government of Alberta Legislation and Regulations.

Position of the Parties

Issue # 1: The assessment of the subject property is in excess of its market value.

Complainant's Position:

- [7] At an aggregate assessed rate of \$112.14 per square foot (psf), the Complainant submits that the subject assessment is in excess of its market value, as determined by the Direct Sales Comparison Approach. It is argued that the requested rate of \$92.00 psf would result in an assessed value representative of market as at July 1, 2012.
- [8] Various maps, aerials and photographs were provided, to offer a visualization of the subject location, and building characteristics.
- [9] As supporting market evidence, the Complainant provided three sales as follows:
- [10] **Sale #1: 2835 23 St. NE;** Sold June 15, 2011 for \$92.00 psf. The time adjusted sale price is \$101.00 psf. Situated in the South Airways Industrial Park, the property consists of 2 multi-bay warehouse buildings, with an aggregate 48,660 sf of assessed area, of which 28% is finished. The buildings are situated on a 3.1 acre parcel of land, providing site coverage of 36%. The building year of construction is 1978.
- [11] **Sale #2: 2115 27 Ave. NE;** Sold November 4, 2009 for \$83.00 psf, and time adjusted to \$90.00 psf. Located in the South Airways Industrial Park, the property consists of a multi-bay warehouse, with 49,703 sf of assessed area, of which 73% is finished. The building is situated on a 2.1 acre parcel of land, with site coverage at 34%. The year of construction is 1980.

- [12] **Sale #3: 700 33 St. NE;** Sold October 30, 2009 for \$101.00 psf, and time adjusted to \$108.00 psf. Located In the Franklin Industrial Park, the property consists of a multi-bay warehouse, with 59,573 sf of assessed area, of which 20% is finished. The building is situated on a 3.6 acre parcel of land, reflecting site coverage of 35%. The year of construction is 1976.
- [13] Based on the above sales, the Complainant has calculated median sale prices of \$92.00.00 psf, (non time adjusted), and \$112.00 psf (time adjusted). The time adjustments were said to reflect the City's time adjustment criteria, and although the time adjusted figures were included, it is the Complainant's position that the assessment should ultimately be predicated on the non time adjusted median sale price of \$92.00 psf. It is this figure on which the assessment request of \$5,355,148 is predicated.
- [14] Finally, the Complainant takes issue with the City's methodology of valuing multiple building properties on the merits and physical characteristics of each individual building. It is argued that the City should consider the aggregate of all buildings on the site as a single entity, because the City process does not reflect actions of typical parties in the real estate market. In support of this position, the Complainant has referenced a number of Assessment Review Board Decisions.

Respondent's Position:

- [15] The Respondent submitted photos, maps and aerial photos, etc., providing a visual description of the subject property, location, building placement, etc.
- [16] In support of the assessment, the Respondent submitted a selection of 4 sale comparables:
- [17] **Sale #1: 7260 12 Street SE;** Sold May 4, 2012, and time adjusted to \$161.56 psf. Located in the East Fairview Industrial Park, the property consists of a single occupant warehouse, with a 2 storey front office extension. Total area of the building is 84,180 sf, with 67% finish. It is situated on 3.2 acres, with site coverage of 41%. The year of construction for the building is 1982.
- [18] **Sale #2: 4410 46 Ave SE;** Sold July 28, 2011, and time adjusted to \$112.55 psf. Located in the Eastfield Business Park, the property consists of a single occupant warehouse, with an assessed area of 60,700 sf, 14% interior finish, and built in 1999. The warehouse is situated on 2.6 acres, and site coverage is 39%.
- [19] **Sale #3: 700 33 Street NE;** Sold October 30, 2009, and time adjusted to \$107.89 psf. Located in the Franklin Industrial Park, the property consists of a single multi-bay warehouse, with a 16 foot wall height. Total area of the building is 59,573 sf, with 3%

finish. It is situated on 3.6 acres, reflecting site coverage of 39%. The year of construction is 1976.

- [20] **Sale #4: 3809 7 St. SE;** Sold November 29, 2011, and time adjusted to \$125.21 psf. Located in the Highfield Industrial Park, the property consists of a single occupant warehouse, with an assessed building area of 40,559 sf, 38% interior finish, and 1982 as the year of construction. The building is situated on 2.3 acres, with site coverage of 41%.
- [21] Further to this, the Respondent provided an assessment equity chart, containing six equity comparables, of sizes ranging from 55,781 to 67,962 sf, and indicating assessed square foot rates of \$108.38 to \$116.91 psf. All six of the comparables are in the northeast quadrant of the City, and all are multi-bay warehouses. Years of construction ranged from 1976 to 1982.
- [22] The Respondent noted that the Complainant's method of analysing sales without making necessary time adjustments is incorrect, thereby providing erroneous results. This is particularly evident, when sales are dated by a number of years. Certainly no evidence came forth from the Complainant that the market was in equilibrium for the preceding three years, or that the City's time adjustment analysis is flawed.
- [23] Finally, The Respondent noted that the Complainant's methodology of valuing multiple building properties is in error. Assessable areas of numerous buildings are combined on an aggregate basis, as if they formed a single entity, which, in their opinion, is incorrect. Furthermore, the City maintains that it applies a (negative) multi building market adjustment to multi building properties. This is based upon 2010 Hearing Year Decisions, and a market analysis of this property group. Support for the City methodology is referenced in a number of Assessment Review Board Decisions included in the Respondent's submission.

Issue #2: The full amount of tax exempt space is not being recognized in the assessment.

Complainant's Position:

- [24] The Complainant submits that the exempt tenant, Centre for Affordable Water and Sanitation Technology (CAWST), which leases 9,570 sf of space in the subject building, is not having the entire leased area exempted in the calculation of the assessment. At issue is approximately 2,000 square feet of the leased area, which CAWST had previously subleased to a non-exempt sub-tenant. Consequently, the 2,000 sf had its exempt status removed by the City. Now, however, the Complainant contends that the

entire 9,570 sf should benefit from the current exempt status of CAWST, as the sub-tenant had vacated the premises as of April 1, 2013. This, the Complainant suggests, puts the entire 9,570 square feet back under care and control of the exempt entity, and consequently, makes it tax exempt.

- [25] A Rent Roll was submitted, confirming the leased 9,570 square feet to CAWST. As well, reference was made to a number of Court of Appeal decisions from British Columbia, Alberta and Saskatchewan.
- [26] A revised requested assessment of \$6,493,580 for the exempt issue alone was provided per exhibit "C3".

Respondent's Position:

- [27] Both parties agree that the occupant of the referenced space qualifies as an exempt organization. The Respondent argues that in order for the City to allow exemption on the 2,000 sf in question, the non profit organization must apply to the City for exempt status on this space. There is a procedure for this, which must be followed. Relative to this, the City references the "Community Organization Property Tax Exemption Regulation" (COPTER), Section 15, (k) (i) and (ii).
- [28] Furthermore the Respondent argues that the exempt occupant's having previously occupied the space under exempt status, is irrelevant. It does not preclude the requirement for the non profit organization to re-apply, following the taxable sub-tenant's vacating the space.

Board's Reasons for Decision:

Issue # 1: The assessment of the Subject Property is in excess of its market value.

- [29] There was insufficient market evidence from the Complainant to convince the Board that a variance to the assessment was justified. Of the three sales referenced in the Complainant's evidence, two were considered not to be sufficiently comparable. The most comparable sale from both parties was that at 700 33 St. NE. Coincidentally, both parties reported this sale in their list of sale comparables. This sale most closely resembles the subject building characteristics, and is located in the Franklin Industrial Park, as is the subject. The time adjusted sale price of \$107.89, supports the subject aggregate assessed rate of \$112.55 psf.

- [30] While equity was not an issue with the Complainant, the Board did review the equity comparables provided by the Respondent and found them to be generally supportive of the subject assessment. This lends support to the Respondent's position that the subject property is assessed in a manner that is consistent and equitable with other similar properties.
- [31] The Board was not in agreement with the Complainant's position that the time adjustment of sales is not required.
- [32] The Board agrees with the Respondent's position wherein properties with multiple buildings are assessed based on separate building valuations, thereby reflecting individual building characteristics. However, this is only to the extent that the multiple buildings on the single-titled parcel vary significantly in their individual building characteristics.
- [33] While the Board reviewed and considered previous Assessment Review Board Decisions as referenced by both parties in this Hearing, the Board is not bound by previous decisions, and bases its' decisions on the merits of all evidence presented, specific to each case.
- [34] On review and consideration of all the evidence before it in this matter, the Board found the Complainant's evidence was not sufficient to warrant a variance in the assessed value.

Issue #2: The full amount of tax exempt space is not being recognized in the assessment.

- [35] The Board deliberated the various references to both the MGA and COPTER, which both parties presented. Whether or not the referenced tenant (CAWST) is a qualified exempt tenant under the legislated provisions, is not in dispute. Both parties agree that CAWST qualifies for exempt status.
- [36] At issue, is the exempt status of the +/- 2,000 sf, which, as of April 1, 2013, was vacated by the non-exempt sub-tenant, and, which space is now back under the care and control of CAWST, per the terms of the head lease. The Board takes direction from COPTER:

"15. A non-profit organization that holds property on which any of the following facilities are operated, may apply to the municipality within whose area the property is located for an exemption from taxation:

(k) a facility used for a charitable or benevolent purpose that is for the benefit of the general public if

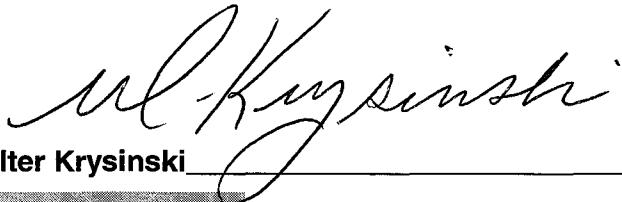
(i) the charitable or benevolent purpose for which the facility is primarily used is a purpose that benefits the general public in the municipality in which the facility is located, and

(ii) the resources of the non-profit organization that holds the facility are devoted chiefly to the charitable or benevolent purpose for which the facility is used."

[37] Testimonial evidence confirmed that the sub-tenant vacated the premises, as of April 1, 2013. Oral testimony also confirmed that the tenant (CAWST) did not apply to the City for exemption on the 2,000 sf in question. Nor did they provide official notification to the City of the revised status of this space. The fact that CAWST had been previously exempt in this space is not relevant. Clearly, the tenant must re-apply for exempt status, per the procedures set out by the City of Calgary. This Board does not consider itself to be a venue to by-pass that process.

[38] The Board confirms the subject assessment at \$6,660,000.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF August 2013.



Walter Krynski

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. C2	Complainant Rebuttal
4. C3	Revised Assessment Request
4. C4	Exerpt from Saskatchewan Court of Appeal Decision

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 ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Industrial	Multi Bay & single occupant Warehouse	1. Market value 2. Exemption	Multi building Industrial properties