

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:

2200-41 Ane Property Ltd. (as represented by MNP LLP), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member, D. Morice
Board Member, P. McKenna***

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 2014 Assessment Roll as follows:

ROLL NUMBER: 032044901

LOCATION ADDRESS: 2200 - 41 Avenue NE

FILE NUMBER: 74338

ASSESSMENT: \$13,550,000

This complaint was heard on the 29th day of July, 2014 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- G. Langelaar, Agent, MNP LLP
- Y. Lau, Agent, MNP LLP
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Appeared on behalf of the Respondent:

- M. Hartmann, Assessor, City of Calgary
- T Nguyen, Assessor, City of Calgary
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Board's Decision in Respect of Procedural or Jurisdictional Matters:

(1) At the outset of the hearing, the Complainant objected to the Respondent's use of three comparable sales on the grounds that the sales had not been provided in response to an information request under Section 299 of the Municipal Government Act. The facts and arguments in the case, as the Board understood them, are these;

(2) During the fall of 2013, the City published a complete list of valid non-residential sales transactions within the City of Calgary. This list was supplied to the Complainant at their request. The three transactions in question were included on that list. On January 15, 2014, the Complainant made a second request for information in accordance with Section 299 of the Act. In response to the second request, the City provided a list of valid sales that contained the following introductory statement; *"The following Table displays the sales that were used in the subject valuation model."* The three sales in question were not included on that list.

(3) The Respondent countered by asserting that the City did not use the three sales in the valuation of the subject, but chose at a later date to use them in defence of the subject assessment. As such, the City should not have been required to provide the sales in the Section 299 response. The City argued that the Complainant did in fact receive the sales in response to the initial 2013 request and was aware of their existence. Moreover, the City asserted that the sales were, in fact, contained in the city's initial disclosure, and therefore the Complainant should have had ample time to research the sales and respond in a rebuttal document.

(4) The Respondent also called the Board's attention to the decision of the Court of Appeal of Alberta, *Canadian Natural Resources Limited (CNRL) v. Wood Buffalo (Regional Municipality)* 2014 ABCA 195, paragraph (19) which states, in part; *"The central issue on appeal is whether the CARB reasonably interpreted s.9(4) by allowing evidence which defends an assessment on a different basis to that disclosed in response to a s.299 request."* In paragraph (20) it states *"The central purpose of taxpayer information rights is to provide taxpayers with information about the preparation of their tax assessments. In deciding whether to make a complainant and, if so, on what grounds, the taxpayer must know what it can rely upon....."*

(5) The Board considers the situation before it to be analogous to the CNRL decision quoted. Furthermore, from a layman's point of view, it seems reasonable for a person to conclude that the three sales in question must have been faulty if they were included in the first list of valid sales, and then excluded from the final, presumably more refined, list that was actually used in the valuation. This comment reflects the comment by the Alberta Court of Appeal in the 2014 CNRL decision. Certainly, no reasonable person would have expected the sales to "crop up" in the defence as being valid sales.

(6) It seems incongruous that the City would not use the same data to defend an assessment as the data that it used to prepare it. To do otherwise seems to contravene the principle of natural justice that Section 299 was intended to protect.

(7) Finally, the Board recognizes that the Complainant probably had ample time to consider the three sales and address them in rebuttal prior to the actual hearing. However, Section 299 of the Act makes no exceptions because of "time" and this Board will also make no exceptions.

(8) The Board finds that Section 299 has not been adhered to by the Respondent City in the manner intended by the legislation, and excludes the three sales from the Respondent's evidence.

Property Description:

(9) The subject is a single tenant warehouse property located in the North Airways community of NE Calgary. The building has an assessable area of 99,202 square feet (s.f.). The building was built in 2002. The finish ratio is 10.0 per cent. The land area is 7.17 acres. The land is designated I-G. Site coverage is 30.30 per cent.

(10) The property is currently being assessed by the sales comparison approach. It is the Complainant's position that properties such as the subject are most often bought and sold for investment purposes and are therefore best valued by income capitalization.

(11) The current assessment reflects a rate of \$136.68 per s.f. The Complainant contends that that rate is not equitable with similar properties, and that the rate does not properly reflect market values.

Complainant's Requested Value: \$9,780,000 or \$11,010,000.

Board's Decision:

(12) The assessment is reduced to \$11,010,000.

Legislative Authority, Requirements and Considerations:

(13) This Board derives its authority from section 460.1(2) of the Act.

(14) Section 2 of Alberta Regulation 220/2004, being the Matters Relating to Assessment and Taxation Regulation (MRAT), states as follows;

"An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property"

(15) Section 467(3) of the Act states;

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(c) the assessments of similar property or businesses in the same municipality."

(16) For purposes of this Complaint, there are no extraneous requirements or factors that require consideration.

(17) The Board notes that the assessment has increased slightly from \$13,030,000 in 2013, to \$13,550,000 in 2014.

Position/Evidence of the Parties

(18) In support of the income calculations, the Complainant submitted a capitalization rate study that contained ten sales comparables that were analysed to derive a capitalization rate. The Complainant's conclusion from the analysis is that a rate of 7.00 per cent is appropriate. The Complainant also relied on third party reports to support the capitalization rate conclusion.

(19) The Complainant submitted ten comparables that were used to derive typical market rents. According to the Complainant, the rents used were typical rents applicable to the time of sale for each comparable. That assertion was not disputed by the Respondent.

(20) For the remaining capitalization inputs, the Complainant relied on third party reports, and a single sale on Aero Drive that was used in support of the Complainant's adopted vacancy rate of 5.0 per cent. The Respondent objected to the use of the comparable, on the grounds that airport related property is not the same as typical warehouse space, and is treated differently in the marketplace. The Complainant did not disagree.

(21) The Complainant incorporated operating costs of \$3.00 per s.f. into the income capitalization calculations. These costs are unsupported in the evidence presented.

(22) The Complainant's income calculations produced the request of \$9,780,000.

(23) The Complainant also submitted two sales comparables that reflected selling prices of \$119 and \$104 per s.f. Comparable building sizes are 118,402 and 99,000 s.f.. The average selling price is \$111.00 per s.f.. It is from these comparables that the Complainant arrived at the alternate request of \$11,010,000.

(24) In response to the capitalization rate study, the Respondent pointed out that three of the sales used by the Complainant were invalid for various reasons. The Complainant did not dispute the assertions made by the Respondent in reference to the three sales. If these are excluded from the analysis, the capitalization rate reduces to 6.65 per cent.

(25) The Respondent submitted five industrial sales in support of the assessment. Three of these have been excluded from evidence by the Board. The remaining two reflect time adjusted

selling prices of \$119.33 and \$103.54 per s.f.. These fall short of supporting the existing assessment of \$136.68 per s.f. The Board notes however, that even if the three excluded sales remained in the analysis, the median selling price reflected would be \$120.75 per s.f., which still fails to support the existing assessment.

(26) The Respondent submitted an additional six sales on a separate chart that reflected a TASP ranging from \$61.46 to \$141.82 per s.f. Three of these properties are substantially older than the subject. The mean of the six relative indicators is \$95.01, and the median is \$90.81 per s.f.

(27) The Respondent also submitted six equity comparables, including the subject. These reflected assessments from \$117.49 to the subject at \$136.68 per s.f. The median is \$125.08 per s.f. Excluding the subject, the average assessment calculates to \$125.21 per s.f.

Findings and Reasons for Decision:

(28) Neither the comparable sales or the equity comparables submitted by the Respondent support the existing assessment.

(29) Having said that, the Board also finds that there are too many unsupported inputs in the Complainant's income approach calculations. The lack of adequate support for the vacancy rate, operating costs, and the change in the capitalization rate casts sufficient doubt on the capitalization results to render the results as unreliable.

(30) The Complainant presented two sales comparables into evidence. These comparables might not be any more comparable to the subject than the Respondent's data. However, they do provide a basis for the Complainant's request.

(31) The onus of proving that an assessment is incorrect lies with the individual alleging it. The onus rests with the Complainant to provide convincing evidence to justify a change in the assessment. In the assessment complaint process, every opportunity is provided to both parties to present evidence and arguments in support of their positions.


(32) Once the Complainant has provided sufficient evidence and argument to cast doubt on the existing assessment, the onus shifts to the Respondent to demonstrate that the assessment is correct. The Board finds that the Complainant has provided sufficient evidence and argument to shift the burden to the Respondent, and the Respondent has not supported the assessment as being correct.

DATED AT THE CITY OF CALGARY THIS

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DAY OF September, 2014.

Presiding Officer


Jerry Zezulka

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:****NO. ITEM**

1. C1 Complainant Submission
2. C2 Complainant Rebuttal
3. R1 Respondent Disclosure

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.*
- (c)

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<i>Decision No. CARB 74338P/2014</i>			<i>Roll No. 032044901</i>	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Single tenant warehouse	Market Value	Sales comparison v. Income Capitalization	Onus