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:

Morprop Holdings Alberta Limited (as represented by AEC International Inc.), COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER
H. Ang, MEMBER
D. Pollard, 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:	**009020900**
LOCATION ADDRESS:	**7315 8 Street NE**
LEGAL DESCRIPTION:	**Plan 9813111; Block 2; Lot 30**
HEARING NUMBER:	**68391**
ASSESSMENT:	**$ 4,350,000**

[1] This complaint was heard on the 25th and 27th days of June, 2012 at the office of the Assessment Review Board [ARB] located at Floor Number 4, 1212 31 Avenue NE, Calgary, Alberta, Boardroom 1.

[2] Appeared on behalf of the Complainant:

- B. Ryan Director, AEC International Inc.
- D. Comrie Director of Asset Management, Morguard Investments Limited

[3] Appeared on behalf of the Respondent:

- C. Neal Assessor, City of Calgary
- M. Ryan Assessor, City of Calgary

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

Preliminary Issue 1 - Consolidation of complaints:

[4] At the commencement of the agenda on June 25th, 2012 the Board had seven files on the docket set for hearings. Prior to the reading of the roll, Mr. B. Ryan alerted the Board that the Complainant wished to proceed with four files in one hearing. The four files have the same Complainant and Respondent representatives. Ms. C. Neal agreed on behalf of the Respondent to a single hearing because of the commonality of the complaints.

[5] **The Board read the roll for this complaint and three additional complaints into a single hearing. The three additional complaints are; roll number 201506052 with hearing number 68418, roll number 009023516 with hearing number 68421, and roll number 009022104 with hearing number 68422. A separate decision is rendered for each complaint.**

Preliminary Issue 2 - Past Board decisions:

[6] The Complainant wanted clarification regarding the use of past Board decisions; in particular the Complainant did not want the Respondent arguing the relevance of past Board decisions. In addition the Complainant wanted to know the proper time to bring up past Board decisions.

[7] Calgary ARB Policies and Procedural Rules [Policy] 37, 38, and 51 were followed to arrive at the conclusion.

[8] **Board decisions are not considered evidence and therefore they are appropriate during the summary and argument portion of the hearing. No questions or cross examination is permitted during the summary and argument portion of the hearing.**

Preliminary Issue 3 - Colour Photographs:

[9] The Complainant requested permission to distribute colour copies of photographs previously submitted to the Board during disclosure.

[10] **As per ARB Policy 38, unaltered colour copies of pictures previously disclosed may be distributed to the Board.**

Preliminary Issue 4 - Witness:

[11] The Respondent objected to aspects of the written testimony of the witness; Mr. D. Comrie, Director of Asset Management, Morguard Investments Limited. The objection centred on his summary of oral evidence submitted within the Rebuttal Document (C2a pp. 8-12) which did not directly rebut content of the Respondent. This objection was raised at the beginning of the hearing prior to evidence submissions.

[12] **The Board accepted Morguard Investments Limited as a Complainant because they have controlling interest in Morprop Holdings Alberta Limited. Therefore, Mr. D. Comrie is not considered a witness and as Complainant Mr. D. Comrie is permitted to speak to the evidence properly disclosed during Complainant presentation and Rebuttal presentation.**

Preliminary Issue 5 - Oath:

[13] The Respondent requested that the testimony of Mr. D. Comrie, Director of Asset Management, Morguard Investments Limited be presented under oath.

[14] **Mr. Brock Ryan and Mr. Darin Comrie volunteered to provide an affirmation prior to the presentation of the Rebuttal Document.**

[15] **No further objections in respect of procedural or jurisdictional matters were raised.**

SECTION B: Issues of Merit

Background:

[16] The Board heard that the subject parcel, though registered to Morprop Holdings Alberta Limited, is one of numerous assets controlled by Morguard Investments Limited. Three additional property complaints were dealt with during this hearing with each having their own decision. The three additional properties are; roll number 201506052 located at 7661 10 Street NE, roll number 009023516 located at 7575 8 Street NE, and roll number 009022104 located at 7326 10 Street NE.

Property Description:

[17] Constructed in 1999, the subject – 7315 8 Street NE, is a two storey suburban office building located one block east of Deerfoot Trail near 72nd Avenue NE in an area known as Deerfoot Business Centre.

[18] The Respondent prepared the assessment showing 19,390 square feet of office space rated as an 'A+' quality and 5,200 square feet of storage space. The site has an area of 84,499 square feet.

Matters and Issues:

[19] The Complainant identified three matters on the complaint form:

#3. an assessment amount
#6. the type of property
#7. the type of improvement

[20] Following the hearing, the Board met and discerned that these are the relevant questions which needed to be answered within this decision:

1. *Is the area, known as Deerfoot Business Centre, comparable for assessment purposes to the entire northeast quadrant of the city?*
2. *Are the four property complaints within this hearing comparable to each other?*
3. *What is the correct capitalization rate (cap. rate) for the subject?*
4. *What net rental rate is the most appropriate for the office space within the subject?*
5. *What vacancy allowance is the most appropriate for calculating income within the subject?*
6. *What operating cost allowance is the most appropriate for calculating income within the subject?*
7. *What non-recoverable allowance is the most appropriate for calculating income within the subject?*
8. *What amount best represents the net operating income (NOI) for calculating the assessment of the subject?*

Complainant's Requested Value:

- $2,700,000 on complaint form
- $2,910,000 or $3,110,000 in disclosure document
- $2,910,000 at hearing confirmed as request

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

Matter #3 - an assessment amount

Question 1 ***Is the area, known as Deerfoot Business Centre, comparable for assessment purposes to the entire northeast quadrant of the city?***

[21] The Complainant verbally and in writing (C1 p. 4, C2a pp. 3-4, 9-10) testified that the Deerfoot Business Centre area should be considered a unique node within the northeast quadrant. Precedence for this position occurred in the southeast quadrant for an area known as Quarry Park. In that case, the Respondent determined market conditions necessitated that Quarry Park is distinct and achieves higher than typical rental rates, which in turn justified its own rental rate stratification. The Respondent did stress that even though rental rates have been stratified separately for Quarry Park, all properties in the southeast quadrant shared vacancy, cap. rate and other income valuation parameters to that of similar and comparable properties.

[22] The Board reviewed the Act, which reads; *"293(1) In preparing an assessment, the assessor must, in a fair and equitable manner, (a) apply the valuation and other standards set out in the regulations, and (b) follow the procedures set out in the regulations. (2) If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located."* The Matters Related to Assessment and Taxation [MRAT] regulation reads; *"When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value..."*

[23] **The Board finds that the Respondent may create its own stratification model. The Respondent determined that the entire northeast quadrant is of an appropriate size and location for comparability of similar properties with the subject. However, the Board also finds on the balance of proof, that the testimony and evidence from the Complainant is credible, and suggest that the Deerfoot Business Centre area does exhibit attributes which tend to make it less comparable to the remainder of the northeast quadrant.**

Question 2 ***Are the four property complaints within this hearing comparable to each other?***

[24] The Complainant verbally and in writing (C1 pp. 3, 171, C2a p. 9) testified that all four properties under complaint by Morprop Holdings Alberta Limited are similar and should be assessed similarly. Currently the Respondent grades the subject property and two others as "A+" whilst the remaining property is graded as an "A". The Complainant does not see a distinction between the four properties. The Respondent testified that the property graded an "A" is unique; it has three single-storey structures with a common parking area. The Respondent also testified that their review of the rent rolls indicate a lower rent rate pattern that attracts a different tenant mix. The Complainant testified that they market all four properties in the same manner and have moved tenants to and from each property type as tenant space requirements dictated.

[25] **The Board does not have the jurisdiction to compel the Respondent to alter their quality index; however, on the balance of proof and based primarily on testimony from the Complainant, the Board finds the four properties are comparable to each other.**

Question 3 ***What is the correct capitalization rate (cap. rate) for the subject?***

[26] The Non-Residential Properties – Income Approach Valuation summary (R1 pp. 8-9) indicates a value of 7.0% for cap. rate. The Complainant suggested that 7.5% is more appropriate and provided evidence (C1 pp. 135-163) to support their position. The Complainant (C1 p. 171) provided two suggestions of value; a) with a cap. rate adjustment, and b) without a cap. rate adjustment. The Respondent (R1 pp. 5, 108-114) provided evidence to support their 7.0% cap. rate as assessed; however, no cap. rate study is supplied.

[27] **The Board finds insufficient evidence to alter the cap. rate and confirms the 7.0% rate.**

Question 4 ***What net rental rate is the most appropriate for the office space within the subject?***

[28] The Non-Residential Properties – Income Approach Valuation summary (R1 pp. 8-9) indicates a rental rate of $19 per square foot for the office space. The Complainant provided testimony (C1 p. 4) suggesting a more appropriate rate is $18 per square foot. Rent rolls (C1 pp. 128-134) were provided to support that position. The Respondent provided testimony and evidence (R1 pp. 4, 77-87) to defend the $19 rate as assessed. The Complainant during rebuttal (C2a pp. 3, 9-10) provided testimony and evidence to support their position and rebut the position of the Respondent.

[29] In analyzing the evidence and testimony, the Board could not ignore an error within the Respondent's evidence; that was the inclusion of "Potential Prime Rent" (R1 p. 80) from the Complainant's budget documents. *"Evidence is the information that is presented to a decision-maker to establish the facts on which*

the decision-maker is to base his or her decision. The information may establish those facts directly or indirectly. If the thing in question is not aimed at established fact – then it is not evidence." (Macauley & Sprague, 2010) The only rates that matter when it comes to rental rates are factual rates that are written on a signed and executed lease.

[30] The fact is, the subject property is 100% vacant and has remained so for more than 2 years as of the valuation date. In addition there is sufficient leasing activity within the Deerfoot Business Centre area and that has been negotiated during the 12 months preceding the valuation date, to establish market rents for that area.

[31] The Complainant created a *prima facie* case, casting doubt on the correct rental rate. Though the Complainant's evidence is not conclusive as to the correct value, the testimony from the Complainant convinced the Board that there is doubt shifting the *onus of proof* to the Respondent. The Respondent provided little evidence and failed to convince the Board that the assessed value is correct.

[32] Furthermore; the Respondent, in the Board's view, misinterpreted the message being sent by the courts in *Canadian Natural Resources Ltd. v. Wood Buffalo (Regional Municipality), 2012 ABQB 177* [CNRL]. The Respondent directed the Board to highlighted paragraphs numbered 163 and 164. The Respondent asserted from these paragraphs that the court does not believe a respondent bears an *onus* to defend their assessment.

[33] The Board read the entirety of the CNRL decision and interprets the message to be; a respondent does not have the obligation of *onus* until the complainant creates a *prima facie* case. In the CNLR decision, the complainant wanted the respondent to prove their revised assessment is correct versus the original assessment before the complainant proved it is incorrect, leading the Honourable Madam Justice D.A. Sulyma to say; *"There is nothing in the MGA [the Act] to suggest that each party bears onus to prove its own number is correct."* [CNRL at para. 163]

[34] Perhaps, had the Respondent provided the Board with a detailed report showing how their $19 figure had been arrived at rather than taking the position that they did not need to prove their numbers, a different decision may have been rendered.

[35] **The Board finds the net rental rate for the office portion of the subject is incorrectly valued at $19 per square foot and changes the rate to $18 per square foot.**

Question 5 ***What vacancy allowance is the most appropriate for calculating income within the subject?***

[36] The Non-Residential Properties – Income Approach Valuation summary (R1 pp. 8-9) indicates 11% for vacancy allowance for both the office space and the storage space. The Complainant provided a suggestion of value (C1 p. 173)

showing a 15% vacancy allowance for the office space and none for the storage space.

[37] The Complainant's position is; that a typical vacancy of 15% exists within the Deerfoot Business Centre area and provided evidence through testimony and disclosure (C1 pp. 4, 91-134, 165) to demonstrate the actual vacancy within the subject is 100%, whilst the combined vacancy for the four properties is 27%.

[38] The Respondent provided testimony (R1 p. 4) that the typical vacancy rate allowance for the northeast quadrant is 11%. Support of that position is provided in the form of a single line (R1 pp. 88-97) to demonstrate to the Board that actual vacancy rate in the northeast is 10.65% The Respondent used the four properties under complaint along with five additional comparable properties to illustrate to the Board that the 11% vacancy allowance rate is justified.

[39] The Complainant through rebuttal (C2a pp. 2-5, 10-11) created a *prima facie* case casting doubt on the correct vacancy allowance. Though the Complainant's evidence is not conclusive as to the correct value, the testimony from the Complainant convinced the Board that there is doubt, shifting the *onus of proof* to the Respondent.

[40] The Board would have preferred to examine the Respondent's detailed report showing how their 11% vacancy value for the northeast quadrant had been arrived at; however, it is not disclosed. The Board carefully analysed the five comparables provided by the Respondent:

i. **1020 64 Avenue NE:** This property has been owner occupied since 1994 as per the evidence (C2a pp. 14-18). The Respondent testified that this property owner would lease if they did not own their property therefore it is still relevant to consider the property as a rental with 100% occupancy. The owner, in this case, chooses not to lease any portion of their building and maintains 100% for their exclusive use. Without exposure to the market, the Board has no idea if 0% or 100% is vacant. In addition it is completely speculative as to what the property owner's rental space requirements would be if they chose to rent space.

ii. **1223 31 Avenue NE:** This property is located in the northeast quadrant and has been correctly included as a comparable within the northeast quadrant. The Complainant suggested that the building is effectively not occupied because the tenant had provided notice and was seeking someone to sublease their space. The Respondent countered that they do not recognize vacant space offered for sublease as vacant. The Board does not see the distinction between a head lease vacancy and a sublease vacancy as both are influencing the market. The issue the Board is concerned about is the occupancy as of the valuation date and suggests the Respondent ought to concern itself on the actual occupancy, if known, rather than the terms of its occupancy. The evidence presented is; that the property was 100% occupied on the valuation date (C2a pp. 20-23) therefore is correctly identified within the Respondent's material as a comparable for the northeast quadrant.

iii. **2116 27 Avenue NE:** This property is located in the northeast quadrant and has been correctly included as a comparable. This property had a

17% vacancy as at the valuation date.

iv. **3016 19 Street NE:** This property is located in the northeast quadrant and has been correctly included as a comparable. This property had a 23% vacancy as at the valuation date.

v. **2675 36 Street NE:** This property is located in the northeast quadrant however is classified as a Medical / Dental Office (C2a p. 19) and is located adjacent to a hospital complex. The Board cannot see how this property is comparable to the subject and ought not to be part of the vacancy study nor is it comparable to the subject property.

[41] Perhaps, had the Respondent provided the Board with their entire northeast quadrant vacancy analysis showing how their 11% vacancy allowance is calculated, a different decision may have been rendered.

[42] The Board recalculated the vacancy information using the subject and the three additional properties within this hearing plus three of the five comparables provided by the Respondent (R1 p. 90) that were not excluded above.

Vacancy Comparison with subject:

Address	Area (Square Feet)	Vacant Space (Square Feet) as of valuation date	Percent Vacant
7315 8 ST NE(Subject)	19,390	19,390	100%
7326 10 ST NE*	46,704	15,861	34.0%
7661 10 ST NE**	77,719	9,684	12.5%
7575 8 ST NE	77,755	0	0%
1020 64 AV NE	-	-	-
1223 31 AV NE	36,000	0	0%
2116 27 AV NE	65,093	11,165	17.2%
3016 19 ST NE	34,111	8,009	23.5%
2675 36 ST NE	-	-	-
Total	356,772	64,109	18.0%

* *The area used in this table for 7326 10 ST NE was derived from the Assessment Request for Information (ARFI) (R1 p. 33) because the values were different than illustrated by the Respondent's comparison (R1 p. 90) and the Complainant's rent roll (C1 p. 134).*

** *The area used in this table for 7661 10 ST NE was derived from the ARFI (R1 p. 63) because the values were different than illustrated by the Respondent's comparison (R1 p. 90) and the Complainant's rent roll (C1 p. 132).*

Vacancy Comparison without subject:

Address	Area (Square Feet)	Vacant Space (Square Feet) as of valuation date	Percent Vacant
1020 64 AV NE	-	-	-
1223 31 AV NE	36,000	0	0%
2116 27 AV NE	65,093	11,165	17.2%
3016 19 ST NE	34,111	8,009	23.5%
2675 36 ST NE	-	-	-
Total	135,204	19,174	14.2%

[43] **The Board finds the vacancy allowance for the subject to be incorrect at 11% and changes the amount to 15%.**

Question 6 ***What operating cost allowance is the most appropriate for calculating income within the subject?***

[44] The Non-Residential Properties – Income Approach Valuation summary (R1 pp. 8-9) indicates a value of $12.50 for operating costs. The Complainant provided a suggestion of value (C1 p. 173) showing $22 for operating costs.

[45] The Complainant provided testimony and evidence (C1 p. 4, 91-134, 164-168) to illustrate to the Board that their method for calculating operating costs for assessment purposes is correct. The Complainant arrived at a value of $22 for the office space with no value presented for the storage space. The Respondent provided testimony and evidence (R1 pp. 5, 99-106) to show how they calculate the operating costs.

[46] The primary difference in operating costs calculation methodology is: the Respondent calculates the expenses normally paid by tenants in addition of rent that a tenant would be responsible for, such as common area maintenance and heat, taxes, and etcetera; while the Complainant's calculation includes the identical items as well as the rent that would have been paid had the space been occupied.

[47] The Board is not convinced that the Complainant built a *prima facie* case on this point therefore the value provided by the Respondent stands. Both the Complainant and the Respondent failed to provide an analysis to prove their value is correct and typical for either the Deerfoot Business Centre area or the entire northeast quadrant. The Respondent did provide excellent information to explain to the Board why their calculating methodology is more correct.

[48] **The Board finds the operating costs for the subject to be correctly valued at $12.50 for the office space and the storage space.**

Question 7 ***What non-recoverable allowance is the most appropriate for calculating income within the subject?***

[49] The Non-Residential Properties – Income Approach Valuation summary (R1 pp. 8-9) indicates a 1% non-recoverable allowance for both the office space and the storage space. The Complainant provided a suggestion of value (C1 p. 173) showing a non-recoverable allowance of 3.5% for the office space with no value presented for the storage space. The Respondent provided an explanation to the Board on how the non-recoverable allowance is calculated; however, failed to indicate how 1% is considered typical in the northeast quadrant. The Respondent's position is simply to state that the Complainant did not provide their financials.

[50] The Board is not convinced that the Complainant built a *prima facie* case on this point therefore the non-recoverable allowance stands. Neither the Complainant nor the Respondent provided an analysis to prove their value is correct and typical for either the Deerfoot Business Centre area or the entire northeast quadrant.

[51] **The Board finds the non-recoverable allowance for the subject to be correct at 1% for both the office space and the storage space.**

Question 8 ***What amount best represents the net operating income (NOI) for calculating the assessment of the subject?***

[52] The Non-Residential Properties – Income Approach Valuation summary (R1 pp. 8-9) arrived at a value of $304,540 for NOI. The Board calculated the NOI by using the numbers decided above or when applicable non-contested numbers:

Potential Net Income

#	Sub Component	Area (Square Feet)	Rental Rate	Total Market Rent
1	Office Space	19,390	$18.00	$349,020
2	Storage Space	5,200	$3.00	$15,600
	Total	24,590	Potential Net Income	$364,620

Values Influencing Income

#	Sub Component	Vacancy Rate	Operating Costs	Non Recoverable	Capitalization Rate
1	Office Space	15.0%	$12.50	1.0%	7.0%
2	Storage Space	15.0%	$12.50	1.0%	7.0%

Effective Net Income

Potential Net Income		$364,620
Less Vacancy	15.0%	($54,693)
	Total Effective Net Rent	$309,927

Net Operating Income

Vacant Space Shortfall		($46,106)
Non Recoverable		($3,099)
	Net Operating Income	$260,722

[53] **The Board finds the NOI is incorrect with an amount of $304,540 and changes the amount to $260,722.**

Matter #6 - the type of property

[54] *The type of property* refers to the predominate use of a property. For example; single-family residential, multi-family residential, warehouse/industrial, land, office buildings, etcetera. The Board did not hear any evidence requesting a change in *the type of property* from its current *office* designation.

Matter #7 - the type of improvement

[55] *The type of improvement* refers to the type of structure which has been constructed on a property. For example; office low-rise building, office high-rise building, single-family dwelling, semi-detached dwelling, etcetera. The Board did not hear any evidence requesting a change in *the type of improvement* from its current *office low-rise* designation.

Board's Decision:

[56] **After considering all the evidence and argument before the Board it is determined that the subject's assessment is changed to a value of $3,720,000, which reflects market value and is fair and equitable.**

DATED AT THE CITY OF CALGARY THIS 24 DAY OF July 2012.

J. Dawson
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM	
1.	C1	Complainant Disclosure – 182 pages
2.	R1	Respondent Disclosure – 136 pages
3.	C2a	Rebuttal Disclosure – pages 1 – 69 of 138 pages
4.	C2b	Rebuttal Disclosure – pages 70 – 138 of 138 pages

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.

Bibliography

Macauley, R. W., & Sprague, J. L. (2010). *Hearings Before Administrative Tribunals - Fourth Edition.* Toronto: Carswell, A Division of Thomson Reuters Canada Limited.

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Income Approach	Net Market Rent
				Expenses
				Capitalization Rate