

**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:

***CALGARY INDUSTRIAL PROPERTIES LTD., COMPLAINANT
(Represented by Colliers International Realty Advisors Inc.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member P. PASK
Board Member D. STEELE***

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 2012 Assessment Roll as follows:

ROLL NUMBER: 033029901

LOCATION ADDRESS: 4404 10 STREET NE

FILE NUMBER: 66488

ASSESSMENT: \$4,890,000.00

This complaint was heard on 23 day of July, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- Troy Howell, Colliers International Realty Advisors Inc. – Representing Calgary Industrial Properties Ltd

Appeared on behalf of the Respondent:

- Magan Lau – Representing the City of Calgary
- Jason Tran – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] Two preliminary matters were presented to the Board. Firstly, the Respondent raised concern with the rebuttal document submitted by the Complainant. It was the position of the respondent the content of the rebuttal document should have been properly submitted as part of the Complainant's disclosure document as the content did not speak directly to the evidence presented by the Respondent. The Complainant stated the rebuttal contained copies of RealNet reports with respect to sales provided by the Respondent and an excerpt from a publication of the Appraisal Institute with respect to the valuation process.

[3] The Board found upon reviewing the rebuttal document there was no basis to exclude the document as the RealNet reports were a response to the Respondent's submission and the excerpt was not, in the opinion of the Board, new information not previously seen by the Respondent, but was only general information

[4] The second matter deals with a request which came from both the Complainant and the Respondent for the evidence, testimony and questions from the three hearings – 033025305 (File Number 66489), 033029901 (File Number 66488) and 033030123 (File Number 66490) – scheduled for July 23, 2012. It was submitted the presentations by both parties would be essentially the same, with difference in the comparable properties presented by the Respondent, tenant rolls and requested assessments. The request was made as the properties were in close proximity to each other in the McCall Industrial area.

[5] In the interest of efficiency the Board had no objections to the request, and the evidence presented will be considered for all three hearings.

Property Description:

[6] The subject property is a multi-tenant industrial warehouse of 3 or more units located at 4404 10 Street NE in the McCall Industrial area. The structure, situated on a 3.06 acre parcel, has a total assessable area of 54,000 square feet. The building was constructed in 1973. The site coverage is 40.56%. The subject property has been valued, based upon the Direct Comparison Approach, for \$4,899,906.32 or 90.74 per square foot.

Complainant's Requested Value: \$3,880,000.00

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

[7] In the interest 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 decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[8] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

[9] Both parties also placed Assessment Review Board decisions before this Board in support of their positions. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issues:

1. Do the characteristics and physical condition of the subject support the use of the Income Approach to indicate the market value of the property in place of the Direct Comparison Approach?

Complainant's Evidence

[10] It was the Complainant's position, "there is case law available that suggest that the income approach is applicable if there is a disconnect between the sales comparables and the subject." (C1, Pg. 8) The complainant submitted an income approach study of the subject to determine an alternative market value, with accompanying analysis of market rents, vacancy allowance and capitalization rate.

Market Rent - Industrial

[11] The Complainant presented three groupings of leases to establish the market rent for the subject property – recent leases located in the subject property, leases from comparable properties managed by Dundee Realty Management Corp. and leases in comparable properties not managed by Dundee Realty Management Corp. (C1, Pg. 8-9)

[12] A summary of the Complainant's comparable leases is shown below:

| | Number of Leases | Average Lease Rent | Median Lease Rent |
|----------------------------------|------------------|--------------------|-------------------|
| 1135 45 Ave NE | 3 | 5.67 | 6.00 |
| Dundee Management Properties | 4 | 7.5 | 7.5 |
| Non-Dundee Management Properties | 3 | 6.5 | 6.5 |
| All Leases | 10 | 6.65 | 6.63 |

[13] The Complainant submitted a market lease of \$6.00 was "fair and reasonable." (C1, Pg. 9).

[14] For the determination of the revised assessment based upon an income approach, the Complainant used a rental rate of \$6.50 per square foot based upon the median value of the current leases from the rent roll for January 1, 2012. (C1, Pg. 16).

Vacancy Allowance

[15] The complainant requested a vacancy allowance of 12.5%, supported by the "chronic vacancy" experienced by the subject property. The Complainant submitted three years of tenant rolls in support of the request, summarized below:

| YEAR | DATE RENT ROLL | OF TOTAL (SQ. FT) | AREA | VACANT (SQ. FT) | AREA | PERCENTAGE |
|---------|-------------------|-------------------------|------|--------------------|------|------------|
| 2009 | 12/01/2009 | 54,000 | | 0 | | 0.0 |
| 2010 | 12/01/2010 | 54,000 | | 3,600 | | 6.67 |
| 2011 | 01/ 2012 | 54,015 | | 2,880 | | 5.33 |
| AVERAGE | | | | | | 4.00 |
| MEDIAN | | | | | | 5.33 |

Capitalization Rate

[16] The Complainant submitted three sales used to support the requested capitalization rate of 7.75% (c1, Pg. 10), summarized below:

| ADDRESS | SALE PRICE | SALE DATE | RENTABLE AREA (SQ.FT) | YEAR BUILT | OVERALL CAPITALIZATION RATE | SALE PRICE/SQ.FT | NET OPERATING INCOME/SQ.FT |
|-------------------|---------------|---------------------|-----------------------------|---------------|-----------------------------------|---------------------|----------------------------------|
| 1415 28 ST. NE | \$6,125,000 | 16-DEC- 2010 | 38,137 | 1970 | 7.6 | \$161 | \$12.39 |
| 1826 25 AVE NE | \$4,439,000 | 18- MAY- 2011 | 35,130 | 1980 | 7.4 | \$126 | \$9.35 |
| 3905 29 ST NE | \$7,600,000 | 21-OCT- 2010 | 95,542 | 1982 | 8.0 | \$80 | \$6.39 |
| AVERAGE | | | | | 7.66 | | |
| MEDIAN | | | | | 7.6 | | |
| SUBJECT | | | | | | | |
| 4404 10 St NE | | | 54,000 | 1973 | | | |

[17] It was the stated position of the Complainant that the "capitalization rate is based upon actual income and not current market rent, therefore, in the current market conditions an adjustment of the capitalization rate of 0.5 and 1.0% upwards would be required." (C1, Pg. 15)

Complainant's Rebuttal Evidence

[18] The Complainant submitted five RealNet documents to show minor differences between the information provided by RealNet and that presented by the Respondent, primarily differences in the square footage. (C2, Pg. 4-15)

Respondent's Evidence

[21] The Respondent submitted a 2012 Industrial Sales Chart (R1, Pg. 12) with three comparable properties in support of the valuation of the subject property. The information is summarized below:

| Subject | Parcel Size (acres) | Assessable Building Area (sq. ft.) | AYOC | Percentage Finish (%) | Site Coverage (%) | Valuation Date | | Total Assessment | Rate per Sq. Ft. |
|-------------------|-------------------------------|--|---------------|--------------------------------|----------------------------|-----------------------------|---------------------------|--|----------------------------|
| 4404 10 St NE | 3.06 | 54,000 | 1973 | 16 | 40.56 | July 1, 2011 | | \$4,899,906 | \$90.74 |
| | Range of Parcel Sizes (Acres) | Range of Assessable Building Areas (sq. ft.) | Range of AYOC | Range of Percentage Finish (%) | Range of Site Coverage (%) | Range of Sale Date | Range of Sale Prices (\$) | Range of Time Adjusted Sale Price (TASP)(\$) | Range of TASP/Sq. Ft. (\$) |
| Three Comparables | 1.08 – 3.56 | 24,880 - 59,573 | 1976-1983 | 3 - 53 | 38.89-45.41 | 05-Sept-2008 to 16-Dec-2009 | 3,225,000 – 6,000,000 | 3,104,242 - 5,775,334 | 96.95 – 124.77 |

[22] In response to the Complainant's application of the Income Approach to valuation, the Respondent submitted an analysis of seven sales, applying the Complainant's requested rental rates, vacancy allowance and capitalization rates. The Respondent also made adjustments for excess land where appropriate. Three of the sales were submitted as part of the Respondent's Industrial Sales Chart. It was the Respondent's submission the resulting median value for the assessment to sales ratios (ASR's) would be below the standard as set out in the Municipal government Act and its Regulations, a range of 0.950 to 1.050 for the median. The median calculated by the Respondent would be 0.56. (R1, Pg. 14). The Respondent submitted the analysis demonstrated that the Complainant's methodology resulted in below market values. The information is summarized below:

[illegible]

[23] Rent rolls for the three sales used by the Complainant in its capitalization study were submitted by the Respondent to show rents were higher than the subject property or rents were from older leases. (R1, Pg. 18-22)

Findings of the Board

[24] In reaching its decision the Board, based upon the request to cross reference the three hearings, was not swayed by the presentation of the Complainant. The Complainant was unsure of the source of the rates used in its analysis, stating in one hearing it was site specific to the complaint then later stating it was the median of the three properties under complaint.

[25] The Board noted the rental rate changed for each of the three complaints - \$6.00 per square foot for 1135 45 Avenue NE, \$6.50 per square foot for 4404 10 Street NE and \$8.00 per square foot for 4624 11 Street NE, clearly a use of site specific rates in its calculation. This was in conflict with the Complainant's statement that it used typical rates in the determination of the value based upon an Income Approach.

[26] With respect to the vacancy allowance the Complainant has requested a "chronic" vacancy allowance based solely upon the subject property. The Board found the Complainant did not establish this was a chronic or even an unusual level of vacancy for the warehouses in the market area through comparison to other properties. The Board found, based upon the evidence that the subject property did not suffer from chronic vacancy. The Board found the Complainant was unable to show how the requested rate for vacancy allowance was established for the subject property as it did not relate to the actual vacancy of the subject or vacancy rates for the market area.

[27] In the final analysis, the Board was not convinced by the Complainant's cap rate analysis as the small population size was too limited with only three sales. Additionally, the Board received no market evidence to support the Complainant's suggested adjustment of 0.5% and 1.0% upwards

[28] The final calculation of the requested assessment is flawed through the use of actual and typical rates. The rental rate and vacancy allowance are site specific to the subject property and the capitalization rate is based upon a limited population of three sales, with questionable adjustments. The mix of typical and actual input left the Board with doubt as to reliability of the calculated value for the assessment proposed by the Complainant. The Board supports the opinion expressed by many previous Boards that calculating the value of a property using the income approach must be based upon a consistent methodology. In other words, if "actual" rates are to be used to calculate a value using an income approach, then all factors in that calculation must reflect actual values. On the other hand, if typical rates are used to calculate value using an income approach, then all factors in that calculation must be typical rates. For assessment purposes typical rates are required.

[29] The Board noted the numerous decisions submitted by the Respondent which spoke to the mixing of components, employing Actual figures for the subject and typical figures and values – CARB 1340/2011-P, for example.

[30] The Board found the evidence submitted by the Respondent, based upon a Direct Comparison Approach of approximately 170 sales, was more compelling than the Complainant's presentation. The comparables submitted into evidence supported the valuation placed upon the subject property.

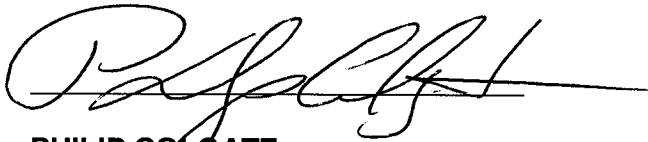
[31] The Board found there was insufficient market evidence to warrant an adjustment to the current assessment based upon an Income Approach analysis.

Decision of the Board

[32] On review and consideration of all the evidence before it in this matter, the Board found the Complainant's evidence was not substantial enough, through the presentation of market evidence, for each of two issues to convince the Board the subject assessment was in error.

[33] The Board confirms the assessment at \$4,890,000.00.

DATED AT THE CITY OF CALGARY THIS 6 DAY OF SEPTEMBER 2012.

A handwritten signature in black ink, appearing to read 'P. Colgate', written over a horizontal line.

PHILIP COLGATE
Presiding Officer

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

| NO. | ITEM |
|------------|------------------------|
| 1. C1 | Complainant Disclosure |
| 2. C2 | Complainant Rebuttal |
| 3. R2 | 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.*

LEGISLATIVE REQUIREMENTS

MUNICIPAL GOVERNMENT ACT

Chapter M-26

1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1

Preparation of Assessments

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

289(2) Each assessment must reflect (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

ALBERTA REGULATION 220/2004

Municipal Government Act

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION

1(f) “assessment year” means the year prior to the taxation year;

Part 1

Standards of Assessment

Mass appraisal

2 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.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

FOR ADMINISTRATIVE USE

| Subject | Property Type | Property Sub-Type | Issue | Sub-Issue |
|---------|---------------|------------------------|--|---|
| CARB | Warehouse | Warehouse Multi Tenant | Cost/Sales Approach v. Income Approach | - Net Market Rent - Capitalization Rate - Vacancy - Equity Comparables |