

**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.

between:

***McMillan-McGee Corp.
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Zacharopoulos, PRESIDING OFFICER
H. Ang, MEMBER
R. Kodak, MEMBER***

[1] 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: 094201605

LOCATION ADDRESS: 4895 35B ST SE

HEARING NUMBER: 64456

ASSESSMENT: \$2,490,000

[2] This complaint was heard by a Composite Assessment Review Board on July 19th, 2011 at the office of the Board located at 4th floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

[3] Appeared on behalf of the Complainant:

- *Mr. J. Smiley* *Altus Group Ltd.*

[4] Appeared on behalf of the Respondent:

- *Mr. K. Gardiner* *City of Calgary Assessment*

BOARD'S DECISION IN RESPECT OF PROCEDURAL OR JURISDICTIONAL MATTERS:

[5] No procedural or jurisdictional matters were raised.

PROPERTY DESCRIPTION:

[6] The subject property is an improved 0.74 acre parcel located at the intersection of 48th Avenue and 35B Street SE, within the Valleyfield industrial area in SE Calgary. The assessment record shows the single-tenanted building on the parcel was built circa 1999, has an assessed area of 13,742 square feet (sf) and is valued through a rate of \$181/sf. The site coverage is 34.04%.

REGARDING BREVITY:

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

MATTERS/ISSUES:

[8] The matter identified by the Complainant as the basis for this complaint is "an assessment amount". While the Assessment Review Board Complaint (complaint form) form also indicates "an assessment class" to be under question, the Complainant indicated at the time of the hearing that there was no objection to the classification of the subject property.

[9] The Complainant has raised the following issues for the Board's consideration:

1. **Is the Income Approach to value (IAV) the recommended valuation method for the subject property?**
2. **Does the Complainant's IAV calculation produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?**
3. **Has the Complainant shown the Respondent's Direct Sales Comparison Approach (DSCA) to value analysis to be an unreliable means of producing an appropriate**

market value indicator for assessment purposes for the subject property as of July 1, 2010?

4. Does the Complainant's equity evidence produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?

COMPLAINANT'S REQUESTED VALUE:

[10] \$1,760,000 (as per Doc C-1, pg 38). The complaint form shows \$1,850,000.

BOARD'S DECISION IN RESPECT OF EACH MATTER OR ISSUE:

[11] In addition to the evidence the parties presented at the hearing the Board referenced the Municipal Government Act and associated Regulations in arriving at its decision. We found the following to be particularly applicable to the complaint before us:

- **Municipal Government Act** (MGA) Part 9 and Part 11.
- **Matters Relating to Assessment and Taxation Regulation 220/2004** (MRAT) Section 1; Part 1 and Part 5.1.
- **Matters Relating to Assessment Complaints Regulation 310/2009** (MRAC) Division 2 and Schedule 1.
- **The Alberta Assessment Quality Minister's Guidelines** (AAQMG)
- **Calgary Bylaw Number 1M2011** (the Business Tax Bylaw)

[12] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. Evidence and argument was put before the Board by the Complainant in that regard; to show the assessment is incorrect and to provide an alternate market value as of July 1, 2010 (see line [10] above). The Board is to determine if (within the direction of the MGA and associated Regulations) it has been swayed to find the assessment is incorrect and if the assessment, being a market value determination as of July 1st 2010, should be revised.

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

1. **Is the Income Approach to value (IAV) the recommended valuation method for the subject property?**

[14] The valuation standard applicable to the subject property is found under MRAT Sec. 6; that being market value. The MGA and associated Regulations do not identify specific valuation method(s) to be utilized in the determination of market value for the subject property.

[15] The Board is therefore prepared to consider evidence pertaining to the determination of the market value of the subject property as of July 1, 2010 with no prejudice for any valuation method employed by the parties.

2. **Does the Complainant's IAV calculation produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?**

[16] The Complainant has provided a valuation as per the IAV based on inputs progressed through the attached analysis (starting Doc. C-1, pg 14). The Complainant's IAV calculation (Doc. C-1, pg 15) shows the following inputs:

- Rent: \$10.50/square foot (sf)
- Vacancy: 5%
- Capitalization rate (cap rate): 7.75%

[17] The Complainant's rent analysis (see Doc. C-1, pg 16) includes 4 properties and the proposed rent rate of \$10.50 is the calculated median. The characteristics provided by the Complainant include address; district; site coverage; building type; year of construction; rental area; lease start date; lease expire date and base rent.

[18] The Board finds the Complainant's references show a number of variable characteristics. The Complainant has not addressed these and the Board finds they do not correlate as to provide a basis for the subject property.

[19] In support of his rent analysis the Complainant provided the 2011 Business Assessment notice for a purported comparable property located across 48th Avenue, showing that premises is assessed for business assessment purposes through a rate of \$8.50/sf.

[20] The Board finds the business assessment rate for the subject premises is not supported by the Complainant's market rent analysis and only serves to create unanswered doubt as to what an appropriate rent consideration may be for the subject property.

[21] The Complainant analyzed 8 market sales in order to develop a cap rate for the Calgary industrial class (see Doc. C-2, pg 19). This sample size is in lieu of 21 market sales in 2010, 56 sales over the last two years and 154 sales over the last three years as per Doc. C-2, pg 7 (table) and Doc. C-2, Tab 2 (details). The sample size reflects the Complainant's ability to "obtain and verify the income data in place at the time of the sale".

[22] The Board finds no evidence to suggest the remaining sales were somehow deemed to not be market indicators; rather, the sample size is correlated to the Complainant's limited income data. The Board finds this serves to limit the sample and therefore the effectiveness of the conclusions.

[23] The Complainant's cap rate study can be found under Doc. C-2, Tab 3. The Complainant advances his analysis and conclusions as representative of the industrial class of properties at large. The Complainant segregates his findings as per year of construction (pre or post 1994). The Complainant concludes that pre 1994 built properties imply a cap rate of 8.25% while post 1994 built properties suggest a cap rate of 7.75%.

[24] The Board finds no direct market evidence to support the Complainant's segregation as per year of construction; the reference to what the City of Calgary may have historically done is not qualified as to apply to the current market realities. Furthermore, the Board does not accept that such a conclusion can be drawn from a limited sample (total of 8; consideration of 3 in the case of post 1994 construction).

[25] The Complainant provides quotes from technical references and Municipal Government Board decisions as well as two British Columbia Court decisions: **Westcoast Transmission Company Limited v. Assessor of Area No. 9 - Vancouver** [1987] BCSC ("Westcoast Transmission") and **Bentall Retail Services Inc. v. Assessor of Area No. 9 - Vancouver** [2006] BCSC ("Bentall"). These are provided with regard to the determination of cap rates.

[26] A review of the legal references made by the Complainant leads the Board to the following: "The various capitalization rates for comparable buildings are analyzed with a view to developing a "typical" capitalization rate for the property" ("**Westcoast Transmission**"). Furthermore, "Estimating a rate is sometimes done by computing the rate of return received by investors on similar properties ..." ("**Bentall**").

[27] The Board finds the following within the Complainant's analysis of the 8 market sales: all are in different communities; sale prices range from \$1,850,000 to \$25,825,000; average bay sizes range 2,940 sf to 302,135 sf; rent roll areas range from 14,700 sf to 302,135 sf. The Board finds these to be extensive variances in property characteristics within the sample.

[28] Upon review of the variable property characteristics of the analyzed market sales the Board does not find comparability or similarity to the subject property at large; or that these properties in combination serve as appropriate proxies for the subject property.

[29] Furthermore, the Board finds the Complainant's resulting capitalization rate range from 7.39% to 9.54% is indicative of a diverse sample and (in light of the other considerations expressed above) puts the Complainant's conclusions in doubt. In summary, the Board does not accept the Complainant's cap rate analysis.

[30] Consequently, the Board finds the Complainant's IAV calculation does not produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010.

3. Has the Complainant shown the Respondent's Direct Sales Comparison Approach (DSCA) to value analysis to be an unreliable means of producing an appropriate market value indicator for assessment purposes as of July 1, 2010?

[31] The Complainant has indicated there were 21 market sales in 2010, 56 sales over the last two years and 154 sales over the last three years as per Doc. C-2, pg 7 (table) and Doc. C-2, Tab 2 (details). The Complainant submits "there is a dearth of sales in the same size range and with similar characteristics..."

[32] The Board finds no market analysis provided by the Complainant to address the market sample at large.

[33] The Complainant looks to an Assessment to Sales Ratio (ASR) analysis as a means of critiquing the reliability of the Respondent's DSCA analysis and conclusions (see Doc. C-2, pg 8). The Complainant submits that "23% of the assessment to sales ratios themselves fall within the mandated range, meaning that 77% do not". The Complainant has accepted that ASR analysis is not an accurate indicator for individual assessments; therefore, he looks to bring the overall reliability of the Respondent's DSCA analysis into question through this ASR submission.

[34] The Board submits an ASR is a quality standard measurement for a stratum or group of properties as set out under MRAT Section 10. The quality of assessment strata are reviewed in accordance with the Alberta Assessment Quality Minister's Guidelines and the Board finds there is nothing before us to suggest the audit (ASR review) of the industrial class of properties as assessed by the City of Calgary shows a failure to meet the quality standards. In fact, testimony before the Board is that the mandated range has actually been met.

[35] The Board finds that (i) the DSCA has in no way been disqualified by the Complainant as an appropriate valuation method for the purposes of calculating assessments; (ii) that the volume of sales discussed under [31] above (including those referenced by the Complainant under Doc. C-4, pg 2) have not been disqualified as market indicators for industrial properties in the City of Calgary, and (iii) that the Complainant's ASR analysis has not shown the Respondent's Direct Sales Comparison Approach (DSCA) to value analysis to be an unreliable means of producing an appropriate market value indicator for assessment purposes as of July 1, 2010.

4. Does the Complainant's equity evidence produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?

[36] The complainant provided 13 purported comparable properties as a basis of assessing the subject property. The Complainant's chart (Doc. C-1, pg 17) shows a range in assessment rates for the referenced properties from \$148 to \$166/sf. The Complainant has identified the following property characteristics: address; roll number; district; total NRA; land area; site coverage; year of construction; 5 finish and assessment data.

[37] The Board finds the Complainant has not established a connection between the purported comparables and the subject property as to establish comparability. Lacking that, these references cannot be assumed to reflect the same valuation considerations as the subject property.

[38] The Board finds the Complainant's equity evidence does not produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010.

BOARD'S DECISION:

[39] The assessment is confirmed at \$2,490,000.

DATED AT THE CITY OF CALGARY THIS 12 DAY OF AUGUST 2011.


I. Zacharopoulos
Presiding Officer

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

NO.	ITEM
1. Doc. C-1	Complainant's Submission
2. Doc. C-2	Complainant's "Industrial Capitalization Rate Analysis – 2011 Assessment Year"
3. Doc. C-3	Summary of Testimonial Evidence
4. Doc. C-4	Complainant's Rebuttal
5. Doc. R-1	Respondent's 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.*