

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of complaints against the property assessments as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***SAM Capital Corp. c/o Strategic Group
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
D. Pollard, MEMBER
A. Wong, MEMBER***

The complaints to the Calgary Assessment Review Board are in respect of property assessments prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER	LOCATION ADDRESS	HEARING NO.	ASSESSMENT
032509341	123 2340 Pegasus Way NE	63216	\$214,000
032509366	127 2340 Pegasus Way NE	63216	\$216,000
032509382	131 2340 Pegasus Way NE	63216	\$216,000
032509408	135 2340 Pegasus Way NE	63216	\$216,000
032509424	139 2340 Pegasus Way NE	63216	\$216,000
032509440	143 2340 Pegasus Way NE	63216	\$214,000
032509663	224 2340 Pegasus Way NE	63216	\$208,500
032509689	228 2340 Pegasus Way NE	63216	\$210,500
032509705	232 2340 Pegasus Way NE	63216	\$210,500
032509747	240 2340 Pegasus Way NE	63216	\$211,000
032509762	244 2340 Pegasus Way NE	63216	\$209,500
032509846	260 2340 Pegasus Way NE	63216	\$211,000
032509861	264 2340 Pegasus Way NE	63216	\$209,000
032509721	236 2340 Pegasus Way NE	63493	\$211,000

The complaints were heard on June 28, 2011, in Boardroom 2 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- C. Van Staden

Appeared on behalf of the Respondent:

- W. Wong, K. Hess

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

At the commencement of the hearing the Complainant raised a jurisdictional matter with respect to the sufficiency of the summary of testimonial evidence included in the Respondent's exhibits for some of the hearings on the agenda for the day. The Complainant argued that upon hearing the Respondent's evidence the deficiency of the Respondent's summary of testimonial evidence will be clearly evident to the Board. In response to questions from the Respondent, the Complainant submitted that the request was not for additional information, but rather that costs should be awarded against the Respondent.

The Respondent argued that there was no mention of a cost application in any of the Complainant's rebuttal materials, and in any event the hearings should proceed as the Board would need to hear all of the evidence to determine the sufficiency of the Respondent's summary of testimonial evidence.

Decision:

In light of the positions of the parties, the Board decided to proceed with hearing the merits of the complaints as scheduled, and directed the Complainant to make any application for costs pursuant to s.52 of *Matters Relating to Assessment Complaints Regulation, Alberta Regulation 310/2009*, within 30 days of the conclusion of the hearings for those specific complaints where sufficiency of the summary of testimonial evidence was at issue. This would allow the Respondent an opportunity to respond to the cost application at a hearing of that matter.

Property Descriptions:

The subject properties are 14 individually titled, warehouse condominium units, constructed in 2000, and ranging in area from 970 to 989 sq.ft. Units numbered 123 to 143 are assessed as developed office space at approximately \$220.00 per sq.ft.; units numbered 224 to 264 are assessed as warehouse storage space at approximately \$214.00 per sq.ft.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment
4. an assessment class

At the commencement of the hearing the Complainant withdrew matter 4, and indicated that the evidence and submissions would only apply to matter 3, an assessment amount. The Complainant set out 14 grounds for the complaints in section 5 of the complaint forms, however in the submissions the Complainant limited the issues to the four objectives set out on C1, p.3. and at the hearing provided no evidence and argument with respect to objective #4, related to equity.

Issue 1: The income approach to value is the best method of valuation for the subject property and indicates a market value of \$147.00 per sq.ft. (of improvement area). {Objectives 1 and 2}.

Issue 2: The direct sales comparison approach indicates a market value of \$188.00 per sq.ft. (of improvement area), and supports a reduction to the 2011 property assessment. {Objective 3}

Complainant's Requested Value:

The Complainant requested that the properties be valued at a rate of \$147.00 per sq.ft. of improvement area, resulting in total assessment values ranging from \$142,500 to \$145,000 as set out on page 55 of exhibit C1.

Board's Decision in Respect of the Complainant's Issue:

Issue 1: The income approach to value is the best method of valuation for the subject property and indicates a market value of \$147.00 per sq.ft. (of improvement area). {Objectives 1 and 2}.

The Complainant argued that as a result of changing market conditions during the assessor's 36 month sales analysis period and the limited number of recent sales to June 30 of the assessment year, the assessor's direct sales comparison approach model is unreliable and an alternate valuation approach should be employed. In support of that argument, the Complainant submitted an ASR (Assessment to Sale Ratio) graph of the sales relied on by the assessor, illustrating that in only 23% of the instances the model predicted a sale price within 5% of the actual sale price of the property; in the remaining 77% of the instances the model predicted sale prices outside of the legislated range of 0.95 to 1.05 [C2, p.8].

The Complainant further argued that the income approach to value was the most reliable approach for the subject property, and submitted the following valuation parameters:

Vacancy rate: {5.0%} estimated from a number of Q1 (first quarter 2010) third party market reporting agencies [C2, p.17].

Market rent: {\$12.00} derived from the median rent rate of nine warehouse / office space leases ranging in area from 540 to 955 sq.ft. and commencing between September 2008 and August 2010. The sample lease rates ranged from \$9.00 to 16.00 per sq.ft. and were not limited to leases of warehouse condominium properties [C1, p.18].

Capitalization rate: {7.75%} determined from an analysis of eight industrial properties (of the 56 sales that occurred between January 2009 and June 2010) ranging in price from \$1,850,000 to \$25,825,000 and exhibiting a median capitalization rate of 7.98%. The eight sales were further analysed on the basis of their age, with the five properties constructed prior to 1994 exhibiting a median capitalization rate of 8.24%, and the three properties constructed after 1994 (as is the subject property), exhibiting a median capitalization rate of 7.79% [C2, p.19]. The Complainant indicated that the sales relied upon were of larger industrial properties, as it was impossible to find sales of condominium warehouse units with corresponding income information that could be used to establish a capitalization rate.

The Complainant set out the calculation for each of the condominium units under complaint, employing the valuation parameters as set out above to arrive at a valuation conclusion of \$147.00 per sq.ft. [C1, p.17].

The Respondent argued that the direct sales comparison approach employed by the assessor is the most appropriate approach for the subject properties, as warehouse condominiums typically trade as owner-occupied properties, with the potential income generating characteristics being less significant. The Respondent did not prepare an estimate of value by the income approach.

Decision Issue 1:

The Board finds that there was insufficient relevant evidence to conclude that the income approach to value is the best method of valuation for the subject property.

With respect to the selection of a valuation approach, the Board has on several occasions indicated that it will not identify a preference as to which valuation approach should be used to determine the assessed value of a property. Notwithstanding, there may be circumstances when one or more approaches will provide a superior estimate of value to another approach; typically when one approach mirrors the motivations of the parties in the marketplace better than does another approach. In this instance, the Respondent's assertion that warehouse condominiums typically trade as owner-occupied properties was substantiated by the Complainant, who indicated that it was impossible to find sales of condominium warehouse units with corresponding income information from which to establish a capitalization rate. Although the Complainant argued that the reported capitalization rate for condominium bays range from 6 - 9% with a median of 8%, there was no market evidence to support these figures.

The Board also finds that there was insufficient evidence to conclude that the assessor's direct comparison approach valuation model is unreliable, as there was no evidence submitted with respect to the median ASR, nor to the Coefficient of Dispersion of the ASR's. Further, although the Complainant's graph indicated that 77% of the sales fell outside of the legislated range of 0.95 to 1.05 for the median ASR, the Complainant conceded that the evidence suggests the model appears to estimate values below the time adjusted sale price almost twice as often as above the time adjusted sale price, 51% vs. 26%, respectively.

The Board is not persuaded that the Complainant's three sales at page 19 of C2, exhibiting a range in values of \$18,300,000 to \$25,825,000, and a range of sizes from 142,672 sq.ft to 302,000 sq.ft., are sufficiently similar in nature to the subject warehouse condominium units, each under 1,000 sq.ft. in size.

Issue 2: The direct sales comparison approach indicates a market value of \$188.00 per sq.ft. (of improvement area), and supports a reduction to the 2011 property assessment. {Objective 3}

The Complainant submitted two January 2009 sales of condominium warehouse bays exhibiting the following particulars:

Address	Sale Price	Net Rentable Area	Rate / sq.ft
405 4656 Westwinds Drive	\$215,000	1,380	\$156
615 3208 8 Ave	\$220,000	1,001	\$220
Median			\$188

Although submitted in evidence, the Complainant indicated that these sales do not give a reliable indicator of value for the subject property [C1, p.16].

In support of the assessment the Respondent submitted the transfer documents for two warehouse condominium unit sales, one of which is a 990 sq.ft. condominium unit within the subject complex, exhibiting time adjusted sale prices of \$236,974 and \$240,000; which equate to approximately \$193 and \$242 per sq.ft., respectively. The particulars are set out below:

Address	Time Adj. Sale Price	Net Rentable Area	Rate / sq.ft
14 2280 39 Ave	\$236,974	1,236	\$193
159 2340 Pegasus	\$240,000	990	\$242

Decision Issue 2:

The Board finds that the sales evidence supports a market value range consistent with the subject assessments.

The Board notes that the RealNet document in C1, indicates that the Complainant's sale of 405 4656 Westwinds Drive includes 400 sq.ft. of mezzanine space, which is said to be developed as a kitchen, bath and sitting area with a separate space heater. The Board is not persuaded that this arguably substandard mezzanine area should be included in the total floor area calculation; without which the net rentable area of 980 sq.ft. would exhibit a sale price of \$219 per sq.ft., and consistent with the remainder of the other sales in evidence.

There is sufficient evidence to establish a value range of \$193 to \$242 per sq.ft. in relation to the range of assessed values of the subject properties at \$214 to \$220 per sq.ft., and well above the Complainant's requested rate of \$147 per sq.ft.

The Board gives significant weight to the \$240,000 sale of 159 2340 Pegasus Way, located at the same address as the subject properties, and notes that the indicated capitalization rate calculated with the Complainant's \$12.00 market rent estimate would be under 5%, in contrast to the requested 7.75%.

Board's Decision:

The assessments are confirmed as set out below:

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032509721	236 2340 Pegasus Way NE	63493	\$211,000

DATED AT THE CITY OF CALGARY THIS 29 DAY OF July, 2011.


J. Krysa
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission
2. R1	Respondent's Submission
3. C2	Complainant's Submission – Capitalization Rates
4. C3a	Complainant's Rebuttal Submission – Part 1
5. C3b	Complainant's Rebuttal Submission – Part 2

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.*