

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

Revised

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:

***Investors Group Trust Co. Ltd.
(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
048505309	1 2616 18 Street NE	64026	\$2, 700,000
048505408	5 2616 18 Street NE	64026	\$ 271,000
048505507	6 2616 18 Street NE	64026	\$ 263,500
048505606	7 2616 18 Street NE	64026	\$ 271,000
048505705	8 2616 18 Street NE	64026	\$ 271,000
048505804	9 2616 18 Street NE	64026	\$ 271,000
048505903	10 2616 18 Street NE	64026	\$ 271,000
048506000	11 2616 18 Street NE	64026	\$ 271,000
048506109	12 2616 18 Street NE	64026	\$ 271,000

The complaints were heard on June 29, 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 (Preliminary Matter Only)

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

At the commencement of the hearings 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 Description:

The subject properties are 9 individually titled industrial warehouse condominium units constructed in 1981.

Unit 1 is assessed as 5,145 sq.ft. of main floor storage area, 18,511 sq. ft. of main floor office area, and 11,013 sq.ft of mezzanine office area, totalling 23,656 sq.ft. at a rate of \$185 per sq.ft. resulting in a total assessed value of \$4,371,697. As a result of an existing lease to a tax exempt tenant within unit 1, an exemption of \$1,666,500 has been deducted from the total assessed value resulting in the final taxable assessment value of \$2,700,000. The Board notes that the total assessed area of Unit 1 is inconsistent with the total area as set out in the Schedule of Unit Factors included at page 18 of C1.

Unit 5, and units 7 to 12 are each comprised of 1,485 sq.ft. of main floor office area, and are assessed at a rate of \$183 per sq.ft.

Unit 6 is comprised of 1,485 sq.ft. of main floor storage area, and is assessed at a rate of \$178 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. Of the four issues set out on page 3 of C1, no evidence and argument was presented with respect to objective #4 relating to assessment equity, resulting in the following specific issues remaining to be decided by the Board:

Issue 1: The income approach to value is the best method of valuation for the subject property and indicates a market value of \$115.00 per sq.ft. (of improvement area) {Objectives 1 and 2}.

Issue 2: The direct sales comparison approach indicates a market value of \$83.00 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 \$115.00 per sq.ft. of improvement area, resulting in total taxable assessment values of \$2,460,000 for unit 1, and \$171,000 for each of units 5 through 12.

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

Issue 1: The income approach to value is the best method of valuation for the subject property and indicates a market value of \$115.00 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]. As a result, the Complainant 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: {\$10.00} derived from the median rent rate of 27 warehouse / office space leases ranging in area from 1,180 to 1,950 sq.ft. and commencing between April 2008 and January 2011. The sample lease rates ranged from \$7.25 to 13.50 per sq.ft. with a median rent rate of \$10.00 [C1, p.16]. The market rent rate for the large unit (Unit 1) was } derived from the median rent rate of six warehouse / office space leases ranging in area from 6,227 to 33,600 sq.ft. and commencing between March 2009 and October 2010. The sample lease rates ranged from \$5.75 to 12.75 per sq.ft. with a median rent rate of \$10.00, and included a lease within the subject premises commencing in March 2009 at a rate of \$10.00 per sq.ft. [C1, p.17].

Capitalization rate: {8.25%} 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 three properties constructed after 1994 exhibiting a median capitalization rate of 7.79%, and the five properties constructed prior to 1994 (as is the subject property), exhibiting a median capitalization rate of 8.24% [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. It was further argued that as a result of the large area of Unit 1, the fact that the property is a condominium is of less significance than its size, which is more comparable to that of other industrial warehouses than to typical condominium warehouse bays.

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 \$115.00 per sq.ft. [C1, p.15].

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

In the absence of compelling market (sales) evidence from either party, the Board finds that the Complainant's income approach valuation is the best evidence of the value of the subject property.

The Board 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 sale price almost twice as often as above the sale price, 51% vs. 26%, respectively.

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 Board finds that the subject property is unique and dissimilar to typical condominium warehouse bays as a result of the large size of unit 1 in the subject complex, as evident in the Respondent's equity comparables on page 16 of R1 where all other units are less than 1980 sq.ft. in size. The Board also noted that there was little differentiation between the \$185 per sq.ft. rate assigned to unit 1 with 23,656 sq.ft. and all of the other, significantly smaller equity comparables.

Issue 2: The direct sales comparison approach supports a reduction to the 2011 property assessment. {Objective 3}

The Complainant submitted a November 2009 sale of a similar industrial warehouse property in a similar area to the subject, and exhibiting the following particulars:

Address	Sale Price	Net Rentable Area	Rate / sq.ft
2115 27 Ave NE	\$4,150,000	49,703	\$83

The Complainant conceded that the sale was not a condominium, however, argued that the property was similar as there were two tenants in the improvement. The Complainant argued that a highest and best use analysis excludes the property from being sold as individual condominium units as a result of existing leases in place that do not correlate with the condominium unit boundaries; and therefore comparative sales of individual condominium units are not applicable [C1, p.16].

In support of the assessment the Respondent submitted two warehouse condominium unit sales, exhibiting the following particulars: [R1, pp.18-25]

Address	Time Adj. Sale Price	Net Rentable Area	Rate / sq.ft
16 1916B 30 Ave NE	\$530,120	3,677	\$144
202 1915 27 Ave NE	\$592,286	2,667	\$222

Decision Issue 2:

The Board finds that there was insufficient market evidence of properties similar to the subject, to establish a value range for the subject properties.

The Board does not accept that the Complainant's sale is similar to the subject properties as it is a sale of a free-standing, non-condominium property, dissimilar to the subject property with respect to the underlying land component as addressed in ARB 0564/2010-P submitted by the Complainant. Although the Complainant argued that a highest and best use analysis excludes the subject property from being sold as individual condominium units due to existing leases in place, there was no highest and best use analysis submitted in evidence; further, the legislated requirement that an assessment reflects the fee simple estate would preclude the consideration of such encumbrances in the valuation of the subject property for assessment purposes. Contrary to the Complainant's argument, the Board could find no indication that the Board in ARB 0564/2010-P agreed with the Complainant's highest and best use analysis, nor that such an analysis was in evidence before the Board in that matter.

The Respondent's warehouse condominium sales are also found to be dissimilar to the subject property as the sale at 1916B 30 Ave NE is almost 2.5 times the size of the subject units 5 through 12, and the sale at 1915 27 Ave NE is a significantly newer unit and approximately 80% larger than the subject units 5 through 12. Neither of the Respondent's sales are similar in size to Unit 1 in the subject property.

Board's Decision:

The assessments are revised as set out below:

ROLL NUMBER	LOCATION ADDRESS	TAXABLE ASSESSMENT	REVISED TAXABLE ASSESSMENT
048505309	1 2616 18 Street NE	\$2, 700,000	\$2,467,500
048505408	5 2616 18 Street NE	\$ 271,000	\$ 171,000
048505507	6 2616 18 Street NE	\$ 263,500	\$ 171,000
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048506000	11 2616 18 Street NE	\$ 271,000	\$ 171,000
048506109	12 2616 18 Street NE	\$ 271,000	\$ 171,000

DATED AT THE CITY OF CALGARY THIS

10

DAY OF AUGUST, 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.*