

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

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

between:

***Optrust West Industrial Inc. c/o Tonko Realty Advisors Ltd.  
(as represented by Altus Group Limited), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***J. Krysa, PRESIDING OFFICER  
D. Pollard, MEMBER  
D. Julien, MEMBER***

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

<b>ROLL NUMBER:</b>	<b>201083870</b>	<b>201083888</b>
<b>LOCATION ADDRESS:</b>	<b>11195 42 St SE</b>	<b>4141 110 Ave SE</b>
<b>HEARING NUMBER:</b>	<b>64321</b>	<b>64325</b>
<b>ASSESSMENT:</b>	<b>\$12,270,000</b>	<b>\$17,140,000</b>

The complaints were heard on August 10 - 11, 2011, in Boardroom 1 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- D. Mewha

Appeared on behalf of the Respondent:

- J. Lepine

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

This matter was heard in conjunction with several other matters during the week of August 8 to 12, 2011. By agreement, the parties submitted evidence and argument with respect to the merits of the Complainant's income approach methodology, involving the Complainant's exhibits: C2a, C2b, C3, C5, C6, and C7, at an earlier hearing of File 64531, (CARB 1740/2011-P). It was agreed that the evidence and argument of both parties would be applicable to the remainder of the matters scheduled, including the subject properties of this decision.

**Board's Decision:** The Board agreed to hear the applicable evidence and argument from both parties during the hearing of file 64531, and consider that evidence and argument in the context of each of the remainder of the matters heard, including the subject properties of this decision.

**Property Description:**

The subject properties are 8.54 acre parcels of I-G land, each improved with a multi-tenanted industrial warehouse structure, constructed in 2007. The improvement details, as assessed, are set out below:

SE Street Address	Parcel Size (Acres)	Site Coverage	Rentable Building Area (sq.ft.)	Year of Construction	Finish %	Assessed Value	Assessed Value per sq.ft.
11195 42 St SE	8.54	42.55%	158,278	2007	0%	\$ 17,802,557	\$ 112.48
4141 110 Ave SE	8.54	37.37%	139,193	2007	48%	\$ 17,140,461	\$ 123.14

The assessment of the property located at 11195 42 St SE, at \$12,270,000, reflects an allocation of value in the amount of \$5,530,000, as a result of a tax exempt tenancy. The Respondent conceded that some of the property attributes are inaccurately assessed; however, was not prepared to offer any corrections and corresponding assessment value changes.

**Issues:**

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

3. an assessment
4. an assessment class

The Complainant did not pursue matter #4, and led evidence and argument only in relation to matter #3, an assessment amount. The Complainant set out 10 grounds for the complaints in section 5 of the complaint forms, with requested assessments of \$8,680,000 (201083870), and \$12,680,000 (201083888); however, at the hearing only the following issues were in dispute:

- Issue 1. The income approach to value is the most appropriate valuation method for the subject properties.
- Issue 2. The time adjusted sale price of the subject properties demonstrates that the property assessments exceed the subject's market values.
- Issue 3. The assessment of the subject properties are inequitable with the assessments of similar properties.

**Complainant's Requested Values:**

At the hearing, the Complainant requested assessment values as set out below:

ROLL NUMBER:	201083870	201083888
LOCATION ADDRESS:	11195 42 St SE	4141 110 Ave SE
ASSESSMENT:	\$12,270,000	\$17,140,000
<b>REQUESTED ASSESSMENT:</b>	<b>\$ 8,170,000</b>	<b>\$ 9,820,000</b>

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

**Issue 1.** The income approach to value is the most appropriate valuation method for the subject properties.

The Complainant argued that the Sales Approach (Direct Sales Comparison Approach) model employed by the assessor is not an appropriate approach to value due to recent market volatility within the municipality. The recent downturn in the economy has limited the number of recent sales transactions to a level that is insufficient for MRA (Multiple Regression Analysis), and the dated sales from late 2007 and early 2008 occurred in a rising market, and are not reflective of market conditions as of the valuation date. The Complainant further argued that the assessor's time adjustments to these dated sales are inaccurate, and do not reflect the market value of the properties as at July 1, 2010, the valuation date for this assessment. Further, the Complainant argued that the assessor has ignored the impact of leasehold interest on sale prices, and has erroneously assumed that the sale price is reflective of the fee simple estate of the property in every instance, without regard for leases in place with rents above or below "market" rates.

In support of these arguments, the Complainant provided several excerpts from the Valuation Guide (Market Value and Mass Appraisal for Property Assessment in Alberta) as set out below: [C2a, pp. 4-6]

Re: Direct Sales Approach Methodology

"It works well when there are sufficient numbers of recent comparable sales transactions to identify value patterns in the market and properties are similar in nature and can be easily compared, e.g. single family homes."

"The different attributes of the comparable sales may require significant adjustments in order to form points of comparison and the basis of valuation for the subject. If sales data is limited, it also becomes difficult to establish appropriate benchmarks to estimate values for similar properties."

"Economic conditions such as deflationary or inflationary cycles and the availability of financing at the time of a comparable sales transaction, further limit the reliability of the market sales comparison approach as a method of valuation."

"There may be sufficient sales data for some classes of warehouses and not for others, or the sales data may not "explain" the value of certain elements. Where there is insufficient sales data, another valuation approach should be used."

The Complainant submitted an analysis of the sales employed in the assessor's MRA to demonstrate that of the total 154 sales, approximately 2/3 (98) occurred more than 18 months prior to the valuation date in what, was argued, was an unquestionably a different market cycle. Further, the analysis demonstrated that recent sales were not equally distributed across various size ranges, with significantly limited sales of properties greater than 50,000 sq.ft., occurring within 18 months of the valuation date, as detailed below: [C2a, p.7]

Size Range sq.ft.	Sale Period July 2007 - Jun 2010	Sale Period Jan 2009 - Jun 2010	Sale Period Jan 2010 - Jun 2010
Up to 2,500	5	3	1
2,501 - 10,000	45	17	6
10,001 - 25,000	48	20	9
25,001 - 50,000	27	10	3
50,001 - 100,000	14	2	0
100,001 - 250,000	14	3	2
250,001 +	1	1	0
<b>Total Sales</b>	<b>154</b>	<b>56</b>	<b>21</b>

The Complainant argued that the above distribution of sales confirm that there were insufficient recent sales of properties greater than 50,000 sq.ft in area for an MRA to accurately predict coefficients for the variables identified by the assessor. In support of the argument, the Complainant included a number of CARB decisions from 2010, wherein the Board agreed that there may have been insufficient sales of large industrial properties to employ the Sales Approach. The Complainant submits that for the current valuation date, there are now even fewer sales of large properties than there were for the 2010 taxation year. [C2a, pp. 10-11]

With respect to the assessor's time adjustments applied to 2007 and 2008 sales, the Complainant argued that changes in capitalization rates over the same time period demonstrate that the assessor's time adjustments are not reflective of the actual changes in the marketplace. In support of the argument, the Complainant submitted a capitalization rate analysis of seventeen industrial properties greater than 100,000 sq.ft in area. The sales transpired between Dec 2006 and May 2010 and illustrate the trend in capitalization rates over the same time period. The Complainant further calculated a time adjusted sale price for each sale by capitalizing the stabilized income of each tenanted property by the typical capitalization rate evident from recent sales. This calculation illustrated that the time adjusted sale prices of the dated sales in the Respondent's MRA, were 12.14% to 27.11% lower than the Respondent's conclusions, considering only current capitalization rates. The Complainant argued that the appropriate time adjusted sale prices would be even lower if an adjustment to current market rents was properly included. [C2a, p.29]

The Complainant further argued that the Respondent's predicted market value assessments of industrial properties were not reflective of the fee simple approach, as the sale prices may have been impacted by existing leases, but no adjustments were made for leasehold interests prior to being included as market indicators in the MRA. In support of that argument, the Complainant referred the Board to incomes achieved by some of the Respondent's higher valued sales.

In support of the income approach methodology, the Complainant provided several excerpts from the Valuation Guide, as set out below: [C2a, pp. 4-6]

"The valuation technique commonly used by assessors across Canada is based on the *direct capitalization method*, which is widely accepted as a mass appraisal technique and applies under existing jurisprudence."

"With appropriate financial information the income approach makes it possible to estimate market values quickly and easily for large and reasonably complex income producing properties. Furthermore the approach adjusts readily to changing market conditions. For income producing properties, the income approach is well accepted by the marketplace and by the courts."

The Complainant also argued that the capitalization rate methodology employed, is identical to that employed by the Respondent several years ago when the industrial inventory was assessed via the income approach. In support of this, the Complainant submitted an excerpt from the Respondent's submission to the Municipal Government Board in respect of a 2005 appeal, which sets out the following: [C2a, pp.14-16]

"The City agrees that for the sale of properties and the calculation of the capitalization rate, the actual income as opposed to the typical assessed income (based on the median rental rate of a similar group of properties) should be used. However, the actual income must still be adjusted for vacancy and non-recoverable expenses due to the regulation of mass appraisal. It is this adjusted actual income that must be used in the calculation of the capitalization rates because the capitalization rates will be applied to typical incomes that have been adjusted by 9%."

In establishing a capitalization rate conclusion, the Complainant submitted a summary of eight industrial property sales that transferred between April 2009 and April 2010, exhibiting a range of capitalization rates from 7.39% to 9.53%, and a median rate of 7.96%. The Complainant submitted that, as the data illustrated that the sales exhibiting higher capitalization rates were associated with older properties, the sales were stratified by improvement "age" to arrive at the following capitalization rate conclusions: [C2a, p.19]

Year of Construction	Capitalization Rate Range	Capitalization Rate Conclusion
1994 and older	7.96% - 9.53%	8.25%
1995 and newer	7.39% - 7.78%	7.75%

In the calculation of the capitalization rates, and the application thereof, the Complainant applied a 5% allowance for vacancy and non-recoverable expenses, and argued that this allowance was appropriate as it reflected city wide long term vacancy levels, and was supported by third party market publications. [C2a, pp.17, 236-245]

With respect to appropriate market rents for the subject property, the Complainant argued that notwithstanding the total size of each improvement, a lease rate reflective of the "average" bay size of the improvement, as demised, is appropriate.

In support of the rent rate conclusion of \$5.75 per sq.ft., for average bay sizes of approximately 55,000 sq.ft. (11195 42 St SE) and 46,500 sq.ft. (4141 110 Ave SE), the Complainant submitted a summary of 11 leases, of areas ranging from 28,710 sq.ft. to 77,360 sq.ft., commencing from October 2009 to November 2010, and exhibiting rental rates ranging from \$4.85 to \$7.00 per sq.ft., with a median rent rate of \$5.75 per sq.ft. [C1, p.77]

The Complainant further submitted a summary of 20 leases, of areas ranging from 53,474 sq.ft. to 186,476 sq.ft., commencing from February 2008 to November 2010, and exhibiting rental rates ranging from \$4.90 to \$7.75 per sq.ft., with a median rent rate of \$5.88 per sq.ft. to illustrate a lease rate applicable to lease areas greater than 50,000 sq.ft. The Complainant submitted that the median of the twelve 2009 and 2010 leases is \$5.38 per sq.ft., and the median of the five 2010 leases is \$5.25 per sq.ft., illustrating the decline in median market rents over the three year period. [C1, p.78]

To illustrate a lease rate applicable to lease areas under 50,000 sq.ft., the Complainant submitted a summary of 10 leases, of areas ranging from 28,710 sq.ft. to 48,308 sq.ft., commencing between April 2009 and October 2010, and exhibiting rental rates ranging from \$4.85 to \$10.90 per sq.ft, and median and average rent rates of \$6.25 and \$6.58 per sq.ft., respectively. [C1, p.79]

Further support for the Complainant's rent rate conclusion of \$5.75 per sq.ft. was demonstrated by a recent lease within the subject property (4141 110 Ave SE), commencing April 2010, for an area of 39,937 sq.ft. at a rate of \$5.50 per sq.ft., as indicated on the subject's rent roll. [C1, p.83]

The Complainant also submitted that the assessed improvement areas are incorrect and do not reflect the subject's rent rolls at C1, pp.81-84, which are somewhat larger for both improvements. The Complainant set out an income approach valuation calculation for the subject properties, based on the rent roll areas to arrive at the following indicated market values:

SE Address	Building Area (sq.ft.)	Market Rent	Vacancy and Non-Recoverable	Capitalization Rate	Market Value	Market Value per sq.ft.
11195 42 St	165,385	\$ 5.75	5%	7.75%	\$ 11,656,975	\$ 70.48
4141 110 Ave	<u>139,418</u>	\$ 5.75	5%	7.75%	<u>\$ 9,826,720</u>	\$ 70.48
	304,803				<b>\$ 21,483,695</b>	

[C1, pp.86-87]

The Complainant submitted that a revised allocation of \$3,482,397 would be attributable to the tax exempt tenancy in respect of the subject property at 11195 42 St SE, resulting in a net taxable assessed value of \$8,174,578.

The Complainant set out a further income approach valuation calculation for the subject properties based on actual leases in place, to arrive at market values of \$13,923,429 (11195 42 St SE) and \$11,614,790 (4141 110 Ave SE); however, the Complainant argued that the majority of existing leases were signed in 2007 -2008, at rent rates higher than current rates, and these market value estimates would therefore include the value of leasehold interests. [C1, pp.86-87]

As a test, the Complainant submitted a calculation to determine the rental rates required to support the current assessments, with a 5% vacancy allowance and at a 7.75% capitalization rate. The Complainant demonstrated that rent rates of \$8.78 and \$10.03 per sq.ft., would be required to support the current assessments of 11195 42 St SE and 4141 110 Ave SE, respectively, and argued that those rent rates are not only higher than current market rates, but also higher than the existing leases that commenced in the height of the market. [C1, pp.86-87]

The Respondent argued that the Direct Sales Comparison Approach is the most appropriate valuation method for the subject property, as there are a sufficient number of sales over the 36 month period preceding the valuation date. The Respondent further argued that the Income Approach could not be employed, as +/-50% of the properties sold were owner-occupied properties where the income potential was not the prime consideration in the determination of the sale price. In addition, the Respondent argued that a valuation by means of the income approach would not be in the spirit of mass appraisal, with respect to the legislated requirements relating to typical market conditions, and fee simple estate.

The Respondent submitted that the assessor had, in the past, relied on the Income Approach to value industrial properties; however, as a result of an abundance of comparable property sales in recent years, the assessment of the municipality's industrial properties has been prepared on the basis of the Sales Approach since 2007. The Respondent argued that although the number of recent sales has declined, the time adjusted dated sales still provide ample market data from which to establish accurate market value predictions for the industrial inventory.

In response to the Complainant's capitalization rate analysis and conclusions, the Respondent argued that the Complainant's eight sales were insufficient to establish a valid capitalization rate conclusion, and that an analysis of all 56 sales from January 1, 2009 to June 30, 2010 should have been undertaken. With respect to the capitalization rate conclusion, the Respondent submitted a third party market report setting out a range of industrial capitalization rates from 6.75% to 7.25%. [R1, p.162]

The Respondent further argued that the issue has been decided by the Calgary Assessment Review Board in some thirty three, 2011 decisions relating to industrial properties [R2]. The Respondent provided ten 2011 decisions, and three 2010 decisions of the Assessment Review Board, and an MGB decision with Board comments relating to various areas of dispute including sufficiency of sales for the sales approach, site specific valuation issues, leased fee estate issues, lease date issues, assessment:sales ratio issues, and cost issues. [R1, pp.15-117]

In rebuttal, the Complainant argued that the Assessment Review Board has not rejected the Complainant's capitalization rate analysis, as argued by the Respondent, but has in some instances relied on it, and in other, earlier instances commented on shortcomings in evidence and or argument; shortcomings that have been addressed at this hearing. The Complainant further submitted that, notwithstanding previous board decisions, a Board is not bound by the decisions of another Board, and each Board must weigh the evidence and argument before it.

In response to the Complainant's net rent evidence and argument, the Respondent argued that the Complainant's \$5.75 per sq.ft. lease rate conclusion was inappropriate as the total size of each improvement is over 100,000 sq.ft., however, the Complainant's rent rate conclusion is derived from lease areas of approximately 50,000 sq.ft. The Respondent provided a summary of the Complainant's leases of areas greater than 100,000 sq.ft. to illustrate a median rent rate of \$5.97 per sq.ft. The Respondent further submitted six additional large area lease

comparables, (one withdrawn) exhibiting rent rates from \$5.27 to \$8.35 per sq.ft. to demonstrate a median rent rate of \$6.00 per sq.ft. [R1, p.147]

In rebuttal, the Complainant argued that rent rates reflecting total building sizes are irrelevant, and that a conclusion based on selecting only the large leases was misleading as six of the eight large leases commenced in 2008 or February 2009, coinciding with the period of higher rent rates. With respect to the Respondent's five additional lease comparables included at page 138 of R1, the Complainant argued that two of the leases commenced in 2006 and early 2007, and three were of single tenanted spaces, including an \$8.35 per sq.ft. lease of a refrigerated premise located at 5801 72 Ave SE.

The Respondent argued that there was no evidence that refrigerated premises would lease at a higher rent rate than a typical warehouse.

### **Decision: Issue 1**

The Board finds that the income approach to value is the most appropriate valuation method for the subject property in this instance.

The Board finds that the Complainant's capitalization rate analysis is a valid indicator of the Calgary industrial market as it relates to the subject property. It is appropriately established, and reasonably well supported with documentary evidence of rents in place at the time of sale, as well as documentary evidence of recent sales transactions.

The Board finds that the sample size of eight sales is sufficient to establish a capitalization rate applicable to the subject property. The eight sales occurred within 15 months of the valuation date, and represent 14%, (8/56) of the sales that occurred in the 18 months preceding the valuation date. Further, excluding the Respondent's estimated +/-50% owner-occupied sales for which no income data would be available, the Complainant's capitalization rate analysis represents 29%, (8/28) of the sales with available corresponding income data, equivalent to one, out of every three and one half sales. Although the Respondent argued that the remaining (unanalyzed) sales may exhibit lower capitalization rates, the Respondent failed to submit any evidence in support of that argument.

The Board accepts the Complainant's methodology in deriving capitalization rates, by using actual lease rates in place at the time of sale; and market lease rates applied to current and upcoming vacant space. The Board accepts that this methodology mirrors the motivations of participants in the income property market, and is supported by assessment theory as set out in the Valuation Guide, and included at C1, page 26. The Board further accepts the Complainant's methodology of adjusting the potential gross income, by the same allowances that are applied to the potential gross income, when the capitalization rate is applied. Notwithstanding the Respondent's argument that this methodology is flawed and unreliable, the Board was persuaded by the Complainant's evidence at page 14 of C2a, and quoted in this decision at page 5 above, that this methodology is essentially identical to that employed by the Respondent in prior years, when industrial assessments were prepared by means of the income approach.

Although the Board accepts the Complainant's methodology in deriving capitalization rates, the Board notes that the best capitalization rate evidence is from properties with actual rents, at or near "market" rents.

In the matter before the Board, there was no evidence provided to refute the Complainant's position that the actual rents in place at the time of the sales, were at or near market rent levels.

The Board agrees that the Complainant's stratification of capitalization rates is subjective and arbitrary; however, the Board accepts that there may be a general capitalization rate demarcation between older and newer improvements, which is supported in that the capitalization rate ranges do not overlap between the groups. As there was no evidence from the Respondent to refute the Complainant's conclusions, the Board accepts the Complainant's demarcation criteria as reasonable, in this instance.

The Board finds that the Respondent's time adjusted sale prices are not valid market indicators. The Board was persuaded that the Complainant's "Long Term Capitalization Rate Trending Comparison" analysis is compelling evidence of insufficient downward time adjustments to the Respondent's sales. Although the Respondent argued that the time adjusted sale prices were appropriate, the Respondent failed to provide any evidence or analysis in support of the -6% time adjustment for the 12 month period from July 1, 2008 to June 30, 2009; and the 0% time adjustment for the periods prior to July 1, 2008, and after June 30, 2009. The Board finds the Respondent's precise dates and consistent rate of market change are simply too arbitrary, and do not reflect typical market behaviour.

With respect to the Respondent's sales approach, the Board finds that there may be insufficient sales from which to establish market values of large industrial properties by means of MRA. Notwithstanding the Board's finding with respect to time adjusted sale prices for the majority of the Respondent's sales, the Board notes that there are only 29 sales of industrial properties greater than 50,000 sq.ft., which the Board finds is an insufficient number of observations from which to determine coefficients for seven variables in an MRA. As there are only six sales of industrial properties greater than 50,000 sq.ft in size which occurred in the 18 month period preceding the valuation date, and in light of the above finding with respect to the Respondent's time adjusted sale prices, the Board places little weight on the Respondent's MRA model predicted assessment value.

The Board also notes that there was no evidence in support of the Respondent's argument that the income approach was not a viable option for industrial properties, as +/-50% of the sales were owner-occupied properties where the income potential was not the prime consideration in the determination of the sale price. The Board notes that occupancy of the properties is not an attribute in the model, as owner occupied properties are stratified along with single tenant properties, which may include more than one tenant and are income generating.

The Board was also confused by the Respondent's argument that a valuation by means of the income approach would not be in the spirit of mass appraisal, as the Board is aware that the majority of other income producing properties are prepared by the income approach, and further, as indicated by the Respondent, as recently as 2007 the municipality relied on the income approach to value industrial properties.

With respect to the previous decisions of the Assessment Review Board submitted by the Respondent in C1, the Board notes that although the Respondent argued that the issues were the same as the issues in the current matter, the Board notes that six of the matters were complaints regarding retail properties and one was a suburban office, which would have had entirely different evidence than what is before the Board in this industrial property complaint.

Further, two of the decisions were regarding cost applications only. Of the remaining five decisions which relate to industrial properties, the Complainant's cross examination demonstrated that previous Board's have not "dismissed" the Complainant's capitalization rate analysis as argued by the Respondent. For example, CARB 1014/2011-P states, "The Board finds that the valuation based on the revised income calculations, together with the sales considered to be the most comparable, indicates a value of \$2,990,000.", and in CARB 1116/2011-P, the Board merely states the Complainant's income approach was not relied on, as the Board in that instance, found that there was sufficient sales evidence available.

The Respondent further argued that the Complainant's income approach has been consistently dismissed by previous Boards in the decisions submitted in R3. However, that position is based on the Respondent's interpretation of the decisions, and it is not an interpretation shared by the Complainant, or the Board. Without a review of all of the evidence before the Board in each of the matters, the Board cannot make a finding in this regard, nor should it. Although decisions of the Board relating to matters with similar evidence and argument may be persuasive, they are not binding on a Board. This Board will not ignore evidence before it, and merely adopt decisions of other Boards that have heard similar matters, because to do so, would breach the principles of administrative law and natural justice.

In cross examination, the Respondent conceded that the Complainant's evidence refuting the Respondent's time adjustments [C2a, p.29], was not in direct evidence before the Board in any of the decisions in R3. As this evidence serves to discredit the majority of the Respondent's sales (from 2007 and 2008), it supports the Complainant's position that there are insufficient reliable sales from which to rely on for a direct sales comparison approach MRA model, and differentiates this matter from the earlier decisions of the Board on the similar issue. The Respondent further conceded that sale prices were not adjusted to remove the value of leasehold interests because Land Title Certificates indicate it is the fee simple estate that is transferred. The Board agrees that the transfers are of the fee simple estate; however, the sale price may not reflect the value of the fee simple estate if it is impacted by existing leases, at rents other than at market levels

With respect to the applicable net rent rate for the subject properties, the Board finds the Complainant's \$5.75 per sq.ft. rate is well supported by examples of recent leasing activity on page 77 of C1, and by the recent lease within one of the subject properties, at \$5.50 per sq.ft.

The Board did not find the Respondent's analysis of the Complainant's large area leases, and additional lease evidence to be persuasive. The Board accepts the Complainant's argument that the total size of an improvement is somewhat immaterial with respect to appropriate lease rates. One would expect the rate at which each space is leased would correspond with the area of that lease, rather than the total size of the building the space is located in. The Board further wondered why the Respondent put so much effort into arguing this point; it is common knowledge that lease rates are typically directly related to (stratified) lease areas in the preparation of assessments for income producing properties (e.g. Retail vs. "Jr. Box Retail" vs. "Big Box" stores, and differing size ranges of CRU spaces). With respect to the Respondent's lease evidence of large lease areas, the Board was not persuaded that the leases were of premises comparable to the subject property, as a result of different tenancies and refrigerated premises. Further, there was no evidence of lease commencement dates, terms or particulars in the Respondent's evidence to enable the Board to determine comparability with the subject.

**Issue 2.** The time adjusted sale price of the subject properties demonstrates that the property assessments exceed the subjects' market values.

The Complainant submitted that the subject properties were purchased in a December 2008 transaction for an aggregate sale price of \$30,000,000, equating to \$98 per sq.ft. of improvement area. [C1, pp.52-58]

The Complainant argued that the sale price (unadjusted), demonstrates that the subject properties' aggregate assessed value, before exemptions, at \$34,943,018 (\$114 per sq.ft.) is in excess of their market value; and further, if the Respondent's time adjustment factor was applied, the aggregate value would be \$28,924,888 (\$95 per sq.ft.) [C2a, p.29]

The Complainant also suggested that the \$30,000,000 sale price was not representative of market value as a result of the subjects' high vacancy (+/-40%); of which 78,294 sq.ft. was subject to a vendor-guaranteed, 2 year head lease at a rent rate of \$7.25 per sq.ft. but was never occupied, and remains vacant. Further, the existing leases in the subject property at the sale date were at contract rent rates, greater than market rent, indicating the existence of a leasehold value in addition to the market value of the fee simple estate. In support of this argument, the Complainant provided the rent rolls of the subject properties' as of March 2009 and December 2010 setting out the vacancies, tenancies and lease rates. [C1, pp.64,68, 81-84]

The Complainant submitted that, notwithstanding the specific issues above, if the sale price were adjusted to reflect current capitalization rates the aggregate assessed estimate of value would be \$26,358,770 (\$86 per sq.ft.), and this would still include a leasehold interest value reflective of the existing contract rents. [C2a, p.29]

The Complainant also argued that the subject's sale prices were incorrectly allocated to the wrong properties by the Respondent in the modelling process, as a result of an inaccurate response to the Sale Assessment Request For Information (ARFI). The Complainant submitted that rather than both properties exhibiting a sale price of \$95 per sq.ft., the Respondent's direct sales comparison approach analysis misrepresents the gross area of the properties, and the rate at which the properties sold, as follows: [C1, p.51]

Property	Sale Price	*TASP	Area	*TASP per sq.ft.
11195 42 St SE	13,600,000	13,112,616	158,278	\$ 83
4141 110 Ave SE	16,400,000	15,812,272	137,846	\$ 115
Total	30,000,000	28,924,888	296,124	\$ 98

*\*(Respondent's) Time Adjusted Sale Price*

The Complainant submitted that the correct areas and allocation are as follows:

Property	Sale Price	*TASP	Area	*TASP per sq.ft.
11195 42 St SE	16,400,000	15,812,272	165,385	\$ 96
4141 110 Ave SE	<u>13,600,000</u>	<u>13,112,616</u>	<u>139,418</u>	\$ 94
Total	30,000,000	28,924,888	304,803	\$ 95

*\*(Respondent's) Time Adjusted Sale Price*

The Respondent submitted the "2011 Assessment Explanation Supplements", setting out the subjects' attributes as detailed in the property description at page 2 of this document. The Respondent indicated that the attributes considered and analyzed were: Building Type (Tenancy), Net Rentable Area, Year of Construction, Region (Location), Finish %, Site Coverage, and Individual or Multi-building property. [R1, pp.118-119]

The Respondent indicated he did not inspect the subject properties, and although he had no evidence to dispute the Complainant's position regarding the improvement attributes, he was not prepared to respond to the purported errors in the assessments. The Respondent conceded that the improvement areas are incorrect, the % finish attribute was applied to the incorrect property, and the sale price allocations are reversed in the sales data relied on for the MRA; however, it was argued that the impact on the MRA model predictions of value was negligible, as the errors affected only two, of the 154 total sales.

The Respondent argued that sales evidence suggests that the subject did not trade at a rate consistent with comparable properties. In support of that argument, and of the current assessments, the Respondent submitted a summary of three sales of industrial properties ranging in size from 119,551 to 167,560 sq.ft., and exhibiting time adjusted sale prices ranging from \$114 to \$135 per sq.ft., and a median rate of \$128 per sq.ft. [R1, p.128]

In cross examination the Respondent conceded that no analysis was completed to determine the effect of leasehold interests on sale prices in the MRA sales inventory.

In rebuttal, the Complainant argued that the Respondent's sales were affected by the value of leasehold interests as a result of the contract rents in place in the properties at the time of sale. The Complainant referred the Board to page 29 of C2a, and compared the net rent rates corresponding to the Respondent's sale prices, at \$7.62, \$9.35 and \$10.27 per sq.ft. in contrast to the average net rent in place within the subject property at time of sale of \$7.06 per sq.ft.

## **Decision: Issue 2**

The Board finds that the time adjusted sale price of the subject properties demonstrates that the property assessments exceed the subjects' market values.

The \$30,000,000 sale of the subject properties in December 2008, is compelling evidence that the aggregate assessment of \$34,943,018 exceeds the market value of the subject properties.

The Board was persuaded that the sale price would require a negative time adjustment to reflect current market. As the Respondent failed to provide evidence to refute the Complainant's analysis on page 29 of C1, or evidence in support of the assessor's time adjustment formula, the Board accepts that the Complainant's time adjusted value conclusion demonstrates that the market value of the subject properties is significantly less than their current aggregate assessment.

The Board did not find the Respondent's comparable sales to be compelling evidence of the market value of the subject property. Despite the comparables' significantly different physical characteristics from those of the subject properties, the Respondent failed to make any adjustments to the sale prices, to account for the differences between the attributes of the comparables and those of the subject property.

The different attributes noted by the Board were:

- one of the comparables is located in the NE region, in contrast to the subject's SE region;
- one of the comparables is single-tenanted, in contrast to the subject which is multi-tenanted;
- the parcel sizes of the comparables ranges from 6.46 acres to 15.84 acres, in contrast to the subject's parcel sizes of 8.54 acres;
- the site coverage of the comparables ranges from 26.41% to 43.31%, in contrast to one of the subjects at 42.55%, (based on incorrect building areas); two exhibit site coverage ratios slightly over 60% of the subject's indicated site coverage;

Further, only one the sales was a recent transaction; the remainder occurred almost 2 years prior to the valuation date and would be affected by the time adjustment issues noted above.

The Board also notes that although these properties exhibit time adjusted sale prices ranging from \$114 to \$135 per sq.ft. and a median rate of \$128 per sq.ft., their 2011 assessments, as set out on pages 28-30 of C4, range from \$100 - \$112 per sq.ft., with an average rate of \$104 per sq.ft.; approximately 19% lower than the median time adjusted sale price. This is in contrast to the subject properties that are assessed at \$112 and \$123 per sq.ft., the average of which would be approximately 24% greater than the (Respondent's) time adjusted sale price of \$95 per sq.ft.

In conclusion, the Board would have found it helpful if the Respondent had inspected the properties prior to attending the hearing, in order to properly respond to the Complainant's evidence and argument, rather than argue for confirmation of an assessment he had conceded was inaccurate from a number of perspectives.

**Issue 3.** The assessment of the subject is inequitable with assessments of similar properties.

The Complainant argued that the assessment of the subject property was inequitable to that of other industrial properties.

In support of the argument, the Complainant provided the assessment attributes of eight, SE industrial properties ranging in size from 149,985 sq.ft. to 235,576 sq.ft. The properties are assessed at rates ranging from \$71 to \$98 per sq.ft., in contrast to the subject properties' assessments at \$112 and \$123 per sq.ft. [C1, p.85]

The Respondent did not provide any evidence in response to this issue. The summary of testimonial evidence at point 3, on page 9 of R1 states:

"Complainant's evidence: None"

"Respondent's evidence: this is an unsupported issue raised in the Complainant's brief, with no support, and should not be entertained as a reason to change the assessment."

**Decision: Issue 3**

The Board finds that assessment of the subject is inequitable with the assessments of similar properties.

In reviewing the assessment comparables provided by the Complainant, the Board notes that the assessments exhibit a range of values from \$71 to \$98 per sq.ft., in contrast to the assessments of the subject properties at \$112 and \$123 per sq.ft. Without any evidence from the Respondent to refute the Complainant's equity range, or to demonstrate that the assessments are equitable in relation to those of similar properties, the Board concludes that the subject's assessments are inequitable with the assessments of similar properties.

**Board's Decision:**

The Board accepts the Complainant's income approach valuations equating to \$70.00 per sq.ft. of improvement area. The Complainant's valuation is well supported by market evidence, and further supported by the Complainant's time adjusted sale price of the subject properties. This value is also reasonably equitable in relation to the undisputed range of equity comparables in evidence before the Board.

The assessments are **revised** as set out below:

<b>ROLL NUMBER:</b>	<b>201083870</b>	<b>201083888</b>
<b>LOCATION ADDRESS:</b>	11195 42 St SE	4141 110 Ave SE
<b>ASSESSMENT:</b>	\$12,270,000	\$17,140,000
<b>REVISED ASSESSMENT:</b>	<b>\$ 8,170,000</b>	<b>\$ 9,820,000</b>

DATED AT THE CITY OF CALGARY THIS

3<sup>rd</sup>

DAY OF NOVEMBER, 2011.

  
J. Krysa  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Submission
2. C2a	Capitalization Rate Submission (Part 1)
3. C2b	Capitalization Rate Submission (Part 2)
4. C3	Rebuttal Evidence (1)
5. C4	Rebuttal Evidence (2)
6. C5	Nova Scotia (Director of Assessment) v. Van Driel
7. C6	MGB DL 025/05
8. C7	MGB 149/08
9. C8	Site Plan (Hand Drawn)
10. R1	Respondent's Submission (201083870)
11. R1	Respondent's Submission (201083888)
12. R2	CARB 1540/2011-P
13. R3	Assessment Review Board Decisions (33)
14. R4	CARB 1681/2011-P
15. R5	CARB 1824/2011-P
16. R6	CARB 1810/2011-P

*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.*

**FOR ADMINISTRATIVE USE**

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Warehouse	Multi Tenant	Income v. Sales Approach	Capitalization Rate Net Rent Rate