



Complaint ID 0262 1670 & 0262 1675
Roll No. 30008800250 & 30008800555

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: June 28, 2022

PRESIDING OFFICER: Bryan Horrocks
BOARD MEMBER: Dennis Dey
BOARD MEMBER: Rob Irwin

BETWEEN:

1422468 ALBERTA LTD & WILMAR VENTURES INC
As represented by Altus Group Limited

Complainants

-and-

REVENUE & ASSESSMENT SERVICES
City of Red Deer

Respondent

This decision pertains to complaints submitted to the Central Alberta Regional Assessment Review Board in respect of property assessments prepared by an Assessor of The City of Red Deer as follows:

ROLL NUMBER	MUNICIPAL ADDRESS	ASSESSMENT AMOUNT
30008800250	15 Burnt Bluff ST	\$4,641,200
30008800555	7450 79 ST	\$2,244,500

These complaints were heard by the Composite Assessment Review Board on June 30, 2022, via video conference.

Appeared on behalf of the Complainant: Brent Foden, Agent, Altus Group Limited
Owners: M. Myschuk and H. Sandstra, (Owners) AM only

Appeared on behalf of the Respondent: Cale Green, Assessor, City of Red Deer
Del Stebner, Assessor, City of Red Deer

DECISION: The assessed value of the subject properties is Changed to \$2,708,600 for 15 Burnt Bluff ST and 1,444,800 for 7450 79 ST.

JURISDICTION

- [1] The Central Alberta Regional Assessment Review Board [“the Board”] has been established in accordance with section 455 of the *Municipal Government Act*, RSA 2000, c M-26 [“MGA”].

PROPERTY DESCRIPTIONS AND BACKGROUND

- [2] The property located at 15 Burnt Bluff ST is a 4.52-acre parcel of I-1 zoned land located in the Burnt Lake Industrial Park in Red Deer, Alberta. The parcel is improved with a 41,392 square foot (sf) multi-tenant industrial warehouse which was constructed in 2007 and considered to be a standard quality in good condition. The interior of the building contains a 5 Ton bridge crane and craneway.
- [3] The above property is assessed using the Income Approach to Value wherein the Net Operating income (NOI) of \$321,435 is capitalized at the rate of 7.00% to determine an estimated market value for assessment purposes of \$4,591,900. An additional value of \$49,300, as determined using the Cost Approach to Value and the Marshall & Swift (M & S) calculator, is added for the crane and craneway to determine the total market value for assessment purposes of \$4,641,200.
- [4] The property located at 7450 79 ST is a 3.85- acre parcel of I-1 zoned land located in the Queens Industrial Park in Red Deer, Alberta. The parcel is improved with a 16,000 sf multi-tenant industrial warehouse which was constructed in 2015 and considered to be a standard quality in good condition.
- [5] The above property is assessed using the Income Approach to Value wherein the NOI of \$130,310 is capitalized at the rate of 7.0% to determine an estimated market value for assessment purposes of \$1,930,500. An additional Excess Land value of \$314,000 is added to determine the total market value for assessment purposes of \$2,244,500.

ISSUES

- [6] An assessment amount was identified on the Assessment Review Board Complaint Forms as the matter that applies to the complaint. At the outset, the Complainant advised the only outstanding issue was market value, more specifically:
- I. Should the vacancy allowance used in the Income Approach to Value to determine the market value for assessment purposes be 35% rather than 10% as assessed?

COMPLAINANT’S REQUESTED VALUES

\$2,708,600 for 15 Burnt Bluff ST
\$1,444,800 for 7450 79 ST

PRELIMINARY MATTERS OR PROCEDURAL MATTERS

- [7] There were no concerns with the panel as constituted. The parties have visited the sites. The parties have discussed the files with no resolution.

[8] The Respondent advised there were concerns with some materials included in the Complainant's Rebuttal disclosure (C4). The Board requested the issue be raised prior to the presentation of the rebuttal. The Respondent, citing *section 10(b) of Matters Relating to Assessment Complaints Regulation, 2018 (MRAC)* requested the following pages in The Complainant's Rebuttal (C4) not be heard as they constitute new evidence which has not been properly disclosed:

- I. C4 page 44 The Complainant stated this page is just responding to sales provided by the Respondent,
- II. C4 pages 46-48 The Complainant stated this was a simple discussion of quality rating,
- III. C4 page 48 The Complainant stated this was an example of what the City of Calgary provides, and was intended as information for the Board,
- IV. C4 pages 51-79 The Complainant stated pages 51-126 are simply regarding quality and how these change over time,
- V. C4 pages 80-101 The Complainant stated this is in response to position of the Respondent on quality changes,
- VI. C4 pages 102-126 The Complainant indicated this was not an actual response to Respondent's disclosure,
- VII. C4 page 158 The Complainant had no response,
- VIII. C4 page 242 The Complainant stated this was only a calculation working with numbers already on record to get more of an apples-to-apples comparison.

[9] Upon review, the Board concurred with the Respondent that the cited pages constituted new evidence that had not been properly disclosed and excluded them from the hearing.

Section 10(b) of MRAC states:

10 A composite assessment review board panel must not hear

(a) any matter in support...

(b) any evidence that has not been disclosed in accordance with section 9.

POSITION OF THE PARTIES

Complainant's Position

[10] The Complainant submitted the subject properties have had three years of vacancy which is far above the typical vacancy in the City of Red Deer. Specifically, the average Vacancy Rate for 15 Burnt Bluff ST is 74% over the previous three years while the average Vacancy Rate for 7450 79 ST has been 60% over the same period. Further, a "Chronic" Vacancy Rate should apply to the subject properties to account for the significant vacancy/leasing challenges which have occurred.

- [11] The Complainant provided the Annual Property Tenant Reports for 15 Burnt Bluff ST for the past three years and a summary page titled Chronic Vacancy which shows for 2019 the vacancy was 44.47%, for 2020 the vacancy was 88.83% and for 2021 the vacancy was 88.83%. It calculated the Stabilized Vacancy (20%-30%-50%) to be 80.0%. It noted that using the City of Edmonton methodology the applied vacancy would be 35%.
- [12] The Complainant provided the Listing for 15 Burnt Bluff ST arguing that best efforts have been applied to secure tenants.
- [13] The Complainant provided the Annual Property Tenant Reports for 7450 79 ST for the past three years and a summary page titled Chronic Vacancy which shows for 2019 the vacancy was 50.21%, for 2020 the vacancy was 81.17% and for 2021 the vacancy was 49.79%. It calculated the Stabilized Vacancy (20%-30%-50%) to be 59.3%. It noted that using the City of Edmonton methodology the applied vacancy would be 35%.
- [14] The Complainant provided the Leasing Brochure for 7450 79 ST arguing that best efforts have been applied to secure tenants.
- [15] In support of its methodology and calculations the Complainant provided a copy of a document titled 2022 Assessment Methodology, Commercial Retail and Retail Plaza from the City of Edmonton underlining under the heading Vacancy and Collection Loss Allowance that "Should a property demonstrate a history of higher than typical vacancy, the City may apply an adjusted stabilized vacancy and collection loss allowance (chronic vacancy). In order to qualify for chronic vacancy, a property owner must provide the property's rent rolls from the last 3 consecutive years immediately preceding the valuation date to show that the property has had a vacancy rate that falls within a range greater than the current typical range. The rent rolls must show that the property has experienced a vacancy greater than the typical range in each of the 3 preceding years. If this is demonstrated, the average of the 3 years will determine which stabilized vacancy allowance is applied. The ranges and the corresponding stabilized vacancy and collection loss allowances are demonstrated in the chart below. The stabilized vacancy is applied on a per building, per space type (CRU or upper non storage) basis. Storage space is not included in the vacancy allowance calculation."
- [16] The Complainant provided 2020 ABCGYARB 2152091 (Calgary Assessment Review Board) noting at paragraph [39] The Board acknowledged the Respondent's reference to the mass appraisal process. However, lacking evidence to the contrary, the Board understood the Complainant's unrefuted evidence to support the subject did not operate under the typical vacancy parameters advocated by the Respondent. The Board's understanding was supported by the substantial long-term vacancy at the subject notwithstanding the efforts to lease it. The Board was thus persuaded that the atypical vacancies at the subject warranted a variance from the typical vacancy allowance. Further, at paragraph [40] The Board found the Complainant's request to be supported and reasonable. It follows that the Board changed the vacancy allowance for all space to 35%.
- [17] The Complainant provided an excerpt from the 2015 Shopping/Power, Neighbourhood & Box Retail Assessment Methodology as prepared by the City of Edmonton noting "Variations in vacancy allowance can occur if vacancy greater than 10% is experienced for at least 3 consecutive years immediately preceding the valuation date. An allowance reflecting the stabilized chronic vacancy rate may be applied on a per building basis."
- [18] The Complainant provided an excerpt from the 2014 Office and Bank Methodology as prepared by the City of Grande Prairie noting "When a demonstrated vacancy greater than 10% is

experienced for at least 3 consecutive years immediately preceding the valuation date, the building will be valued considering this as a chronic factor.”

- [19] The Complainant concluded the subject properties have had 3 years of consistent vacancy far above the typical assessed vacancy rate applied in the City of Red Deer and a Chronic Vacancy Rate should apply to the subject properties to account for the significant vacancy/leasing challenges which have occurred for the previous several years. It requested the vacancy allowance be increased to 35% for both properties.

Respondent's Position

- [20] The Respondent submitted the Complainant's evidence raises the issue of whether chronic vacancy should be applied. It is the City's position that chronic vacancy is subjective with no legislative support. The City does not practice the application of chronic vacancy as it goes against the principles of mass appraisal and valuation based on market typical data.
- [21] The Respondent provided a table titled 3 Year Vacancy Analysis (403 Industrial Warehouse) noting the vacancy rate is 10.23% for 2019, 9.89% for 2020 and 10.95% for 2021.
- [22] The Respondent provided a table titled 2021 Rates – Asmt Code 403 Industrial Warehouse noting that vacancy rate applied for all industrial property assessments is 10.00%.
- [23] The Respondent stated it has not found any physical or locational factors that would impact the subject properties different than adjacent properties. Further, no information has been provided to indicate that the properties are in any way atypical, or to identify an issue that would cause higher than typical vacancy.
- [24] The Respondent provided a table titled Industrial Warehouse Sales. The table contains property and sale information from six industrial warehouse sales which occurred in the period November 7, 2018 to March 8, 2021. It noted the sale prices ranged from \$115 to \$141 per sf while the Burnt Lake property assessment is \$112 per sf and the requested assessment is \$65 per sf, well below the range.
- [25] The Respondent concluded the City of Red Deer has fairly and equitably applied a city-wide market typical vacancy rate of 10% for industrial warehouses. Further, chronic vacancy is not defined or supported in legislation and is not utilized by the City of Red Deer in practise or policy.
- [26] The Respondent stated that thirty days after the valuation date MLS reported that two units in the Burnt Lake property were leased at \$11.50 per sf.
- [27] The Respondent provided one RARB Decision and five City of Calgary CARB decisions in support of its position that chronic vacancy is subjective with no legislative support.

Complainant's Rebuttal Position

- [28] The Complainant submitted the subject properties have had 3 years of consistent vacancy far above the typical assessed vacancy applied in the City of Red Deer.
- [29] The Complainant provided a plethora of City of Calgary CARB decisions in support of its position that the subject properties have experienced chronic vacancy which is far above the typical


vacancy experienced in the City of Red Deer and that a chronic vacancy rate should be applied.

Board's Findings of Fact and Reasons for Decision

- [30] The Board finds the 10% vacancy allowance applied to the subject properties does not adequately reflect the subjects' vacancy rates and their effect on the subjects' market values.
- [31] The Respondent did not refute that the buildings suffered from chronic atypical vacancy levels. The Board was not persuaded by the Respondent's submission that the vacancy levels suffered by the subject properties were due to factors that would not constitute a chronic state.
- [32] The Board is persuaded the subject properties have experienced atypical vacancy for three consecutive years and should be differentiated from their peers thru the application of an increased vacancy rate.
- [33] The Board finds the City of Edmonton methodology for determining chronic vacancy fair and reasonable in the absence of any alternatives and increases the vacancy for both subject properties to 35%.

Conclusion

- [34] Increasing the vacancy rate to 35% for both properties results in revised assessments of \$2,708,600 for 15 Burnt Bluff ST and \$1,444,800 for 7450 79 ST.
- [35] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 26th day of July 2022 and signed by the Presiding Officer on behalf of all the panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



B. Horrocks
Presiding Officer

If you wish to appeal this decision you must follow the procedure found in section 470 of the MGA which requires an application for judicial review to be filed and served not more than 60 days after the date of the decision. Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX "A"

Documents presented at the Hearing and considered by the Board.

<u>NO.</u>	<u>ITEM</u>
1. A.1	Hearing Materials provided by Clerk (74 pages)
2. C.1	Complainant Disclosure (218 pages)
3. C.2	Complainant Rental Rate & Excess Land (92 pages)
4. C.3	Complainant Chronic Vacancy Allowance (163 pages)
5. C.4	Complainant Rebuttal (244 pages)
6. C.5	Complainant Legal (223 pages)
7. R.1	Respondent Disclosure (0262 1670 - 113 pages & 0262 1675 110 pages)
8. R.2	Respondent Legal (66 pages)
9. R.3	Respondent 2018 ABQB 501 (27 pages)

APPENDIX "B"
LEGISLATIVE AUTHORITIES CONSIDERED BY THE BOARD

Municipal Government Act, R.S.A. 2000, Chapter M-26 (the MGA)

s 1(1)(n) In this Act,

- (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;

s 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, and
- (b) the valuation and other standards set out in the regulations for that property.

s 460.1(1) A local assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on

- (a) an assessment notice for
 - (i) residential property with 3 or fewer dwelling units, or
 - (ii) farm land

s. 460.1(2) Subject to section 460(14), a composite assessment review board has jurisdiction to hear complaints about

- (a) any matter referred to in section 460(5) that is shown on
 - (i) an assessment notice for property other than property described in subsection (1)(a)

s. 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

(1.1) For greater certainty, the power to make a change under subsection (1) includes the power to increase or decrease an assessed value shown on an assessment roll or tax roll.

(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(9).

(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

Matters Relating to Assessment and Taxation Regulation, 2018 A.R. 203/2017 (MRAT)

s. 5 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.

s. 6 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.

s. 7(1) The valuation standard for a parcel of land is

- (a) market value, or
- (b) if the parcel is used for farming operations, agricultural use value.

Matters Relating to Assessment Complaints Regulation, AR 201/2017 (MRAC)

s. 19(1) Parties to a hearing before a panel of an assessment review board may attend the hearing in person or may, instead of attending in person, file a written presentation with the clerk.

Meeting Procedures (COVID-19 Suppression) Regulation, AR 50/2020

s. 3(1) Where the Act requires a council, board or commission to hold a meeting in public, that requirement is deemed to have been complied with by holding the meeting by electronic means, including, without limitation, a teleconference, or a live, publicly streamed broadcast, if

- (a) members of the public are able to hear the meeting as it occurs,
- (b) any members of the public who would be entitled to make submissions at the meeting if the meeting were being held in person are able, before and during the meeting, to make submissions by email or any other method that the council, board or commission considers appropriate, and
- (c) the following persons attend the meeting by electronic means:
 - ...
 - (iii) in the case of a meeting of an assessment review board or the Municipal Government Board, the presiding officer,