



Complaint ID 0262 1673
Roll No. 30008800530

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: JULY 11, 2022

PRESIDING OFFICER: L. LOVEN
BOARD MEMBER: R. BROWN
BOARD MEMBER: R. SCHNELL

BETWEEN:

WILMAR VENTURES INC
As Represented by Altus Group Limited

Complainant

-and-

REVENUE & ASSESSMENT SERVICES
City of Red Deer

Respondent

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

ROLL NUMBER: 30008800530

MUNICIPAL ADDRESS: 167 QUEENS DR

ASSESSMENT AMOUNT: \$2,285,100

The complaint was heard by the Red Deer Regional Assessment Review Board on the 11th day of July 2022, via video conference.

Appeared on behalf of the Complainant: B. Foden, Altus Group Limited

Appeared on behalf of the Respondent: C. Green, City of Red Deer

DECISION: The assessed value of the subject property is changed to \$2,247,200.

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 DESCRIPTION AND BACKGROUND

- [2] The subject property is a 19,000 square foot multi-tenanted industrial warehouse building, built in 2013 and located in the Queens subdivision on 1.76 acres of land. The five bays in the building are partitioned into four rental units, Bay 110, Bay 120, Bay 130 and Bays 140 & 150.

PRELIMINARY MATTERS

- [3] The Presiding Officer confirmed that no Board Member raised any conflict of interest with regard to the matter before them.
- [4] Neither party raised any objection to the panel hearing the complaint.
- [5] At the outset of the hearing, the Respondent raised an objection to the Complainant's rebuttal in that it may not properly responding to the Respondent's disclosure. The Board considered the Respondent's objection. As it would be difficult for the Board to properly consider the objection without having heard the argument and evidence presented by each party, the Respondent agreed to raise the objection immediately prior to the presentation of the Complainant's rebuttal. No additional preliminary or procedural matters were raised by any party. Both parties indicated that they were prepared to proceed with the hearing of the complaint.
- [6] The parties requested argument and evidence was carried forward from roll number 3003110835 heard earlier in the day.

POSITION OF THE PARTIES**Position of the Complainant**

- [7] The only issue raised by the Complainant was the assessed vacancy rate of 10%. The Complainant argued the 10% assessed vacancy rate resulted in an assessment higher than market.
- [8] In support of their position, the Complainant submitted the 2022 assessment for the subject property showing a vacancy rate of 58% and provided the last three year's rent rolls showing 0.00% vacancy for 2019, 68.31% vacancy for 2020 and 73.95% vacancy for 2021. Using the City of Edmonton's 2022 assessment methodology for commercial retail and retail plaza stabilized vacancy, the Complainant determined the stabilized vacancy to be 57.5% if weighted (20%-30%-50%) average or 48.4% if straight-line ($33\frac{1}{3}\%$: $33\frac{1}{3}\%$; $33\frac{1}{3}\%$) averaged. For an actual vacancy ranging from 40% to 50%, the City of Edmonton methodology applies a stabilized vacancy rate of 25%.

[9] Highlighted in the City of Edmonton's methodology is the following paragraph:

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.

[10] Assessment review board decisions from the City of Calgary, as well as assessment methodologies for commercial retail properties from the City of Edmonton and the City of Grande Prairie were provided regarding the conditions by which an application of an atypical or chronic vacancy rate could be considered.

[11] Case law regarding fairness and equity as related to market value, were presented: **Assessor for Area 9 – Vancouver v. Bramalea Limited and T. Eaton Company (1990)**, regarding, **Strathcona (County) v. Alberta Assessment Appeal Board, 1995, ABCA 165**; **Lougheed Tomasson Inc. v. Calgary (City of), 2000 ABCA 81**; regarding mass appraisal and market value, **Mountain View County v. Alberta (Municipal Government Board), 2000 ABQB 594**; **Wal-Mart Canada Corp. v. Calgary (City of), 2013, ABQB 21** regarding the applicable legal principle when reviewing assessment decisions.; and, **1544560 Alberta Ltd. v. Edmonton (City), 2015 ABQB 520**, regarding the assessed value as reflective of market value.

[12] The Complainant submitted almost 20 Calgary ARB decisions regarding vacancy of both retail and office properties assessed on the income approach.

[13] In conclusion, the Complainant claimed that a vacancy of 40% to 50% is supportable and the sales comparables provided by the Respondent are smaller and of different quality compared to the subject property. Further the requested 25% vacancy is supported by the City of Edmonton methodology.

Position of the Respondent

[14] Respondent provided photos of the subject property and details of the income approach methodology used to value the subject property as well as a review of typical market conditions used in mass appraisal.

[15] The assessment details of the subject property were presented showing and overall vacancy of 58% for 2021 and a value of \$120 per square foot.

[16] The Respondent submitted that response rates for non-residential assessment requests for information (ARFI) for the past three years has been in the 75% to 80% range and that city-wide three-year vacancy analysis for industrial warehouse properties has ranged from 9.98% in 2020 to 10.95% in 2021.

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- [17] Regarding equity, the Respondent's chart of eight industrial subdivisions showed all industrial warehouse properties assessed at a 10% vacancy rate.
- [18] The Respondent argued that "chronic vacancy goes against the standards of mass appraisal", "it is not defined in legislation" and "it is subjective and nature and creates inequity". The Respondent did not find physical or locational factors that would affect the property and no information was provided to indicate the subject property was in any way atypical.
- [19] The 10% vacancy allowance applied to the subject property "is a reasonable and accurate reflection of market conditions" and chronic vacancy is not applied "in practice or policy".
- [20] In support of its argument that the application of an atypical vacancy is subjective, the Respondent provided an excerpt from an assessment review board decision that identified chronic vacancy as a symptom; and, provided other assessment review board decisions that supported assessment be based on typical rates in accordance with mass appraisal.
- [21] The Respondent presented a lease signed for units 140 & 150, after the valuation date of July 1, 2021, in December 2021 for \$12 per square foot.
- [22] Six sales of industrial warehouse sales over the past three years in five different neighbourhoods ranged in year built from 1972 to 2014, in quality from 3 to 4, in net leasable area from 11,179 to 28,500 square feet, and in sale price per square foot from \$115 to \$141, compared to the subject property at 2013 year built, 2 quality, 19,000 square feet and \$129 per square foot assessed value, and the Complainant's request of \$90 per square foot.
- [23] A Cushman & Wakefield listing brochure for the subject property showed unit 110 available at \$13.00 per square foot. A Salomons Commercial listing brochure showed unit 120 available at \$12.00 per square foot
- [24] The Respondent submitted five assessment review board decisions, four from Calgary and one from Red Deer, confirming the assessed vacancy rate. The properties consisted of one retail, one high-rise apartment and three suburban offices.
- [25] ***Edmonton (City) v. Edmonton (Assessment Review Board) 2018 ABQB 501*** was submitted regarding the "reasonableness" to provide information under s. 299/300 of the Act.
- [26] In summary, the Respondent stated that chronic vacancy is inadequately defined and not consistent across municipalities in Alberta and the method used by the Appellant to determine the atypical vacancy rate requested is based on that for commercial retail properties used by the City of Edmonton. The typical vacancy rate of 10% is equitable and reflective market conditions.
- [27] The Respondent concluded a new lease, after the evaluation date of July 1, 2021, supports the assessed rental rate for main floor space for the subject property and that the requested vacancy rate of 25% results in an assessment of \$90 per square foot that is not supported by recent sales of similar properties. Finally, assessment review board decisions support that chronic vacancy arises from an identifiable cause.

Complainant's Rebuttal

- [28] The Board considered the Respondent's objection to pages 7 to 62, inclusive, of the rebuttal on the grounds that was not in response to information contained in the Respondent's disclosure and should therefore be disallowed. As the disclosure contained information that pertained in part to the assessments of other properties not before the Board, the Complainant agreed that pages 64 to 67, inclusive, be struck. The panel considered the Respondent's objection and determined that the Board would allow the pages 7 to 62 to be heard with the understanding the Board would evaluate the weight the information within those pages when making their decision.
- [29] In the rebuttal, the Complainant cited *Canada Safeway Ltd. v Calgary (City)*, 2016 ABQB 200, *Jaroc Holdings Ltd. V Calgary (City)*, 2018 ABQB 969, *Nortel Networks Inc. v. Calgary (City)*, 2017 ABQB 0601-4733, *Costco Wholesale Canada Ltd. V City of Medicine Hat*, 2022 ABQB 129 and *Rendez-Vous Inn Ltd. V. St. Paul (Town)*, 1999 ABQB 942 regarding reasonableness with respect to filing deadlines, and disclosure. Two Calgary ARB decisions regarding disclosure were referenced; plus, *Cidex Developments Ltd. V. Calgary (City)*, 2018 ABQB 519 regarding procedural fairness.

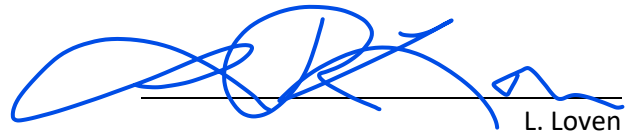
BOARD FINDINGS and DECISION

- [30] Although the no evidence was provided regarding the timing of the commercial listing for the vacant units, commercial real estate marketing brochures for the subject property provided by the Respondent confirmed that vacant units were being actively marketed.
- [31] The actual vacancy rate of the subject property is confirmed both by 2019, 2020 and 2021 ARFI's submitted to the Respondent for the subject property and the Respondent's 2021 assessment detail report.
- [32] Even though the Board agrees that chronic vacancy is not defined in legislation and no municipal policy exists on chronic vacancy; the assessment board decisions submitted from other municipalities in Alberta support that vacancy as an input to the income approach to valuation can vary in accordance with site specific conditions within a market segment. The same is true with rent and capitalization rates and is not limited to any specific type of commercial property that is assessed using the income approach.
- [33] Further, the Board finds that site specific conditions are not limited to those such as physical or locational characteristics, or property management decisions, but may also include other external (potentially negative) market conditions such as a decline in the oil and gas service industry or a pandemic.
- [34] The Board was not presented with any evidence to either support or refute the Respondent's claim that vacancy did not influence market value. Accordingly, the Board placed little weight on this claim as the Board finds it difficult to understand how an income producing multi-tenanted industrial warehouse property, like the subject, would have the same value in the market if it was either fully occupied or completely vacant.

- [35] Even though the Respondent lacks a policy or guideline regarding chronic vacancy, the assessment review board decisions provided, support the average of three years prior vacancy to establish a bona fide claim for a higher than typical vacancy.
- [36] The Board accepts the Respondent's position that the application of unusually high vacancy rates can result in property values approaching zero or negative that are not reflective of market. The requested vacancy rate of 25% results in a market value of \$90 per square foot, well below that of the sales of similar properties. With little further information given regarding the sales provided, the Board finds the most similar sale to be that in the same neighborhood, Queens, and one-year newer, lower quality (3) compared to the subject property and 23% larger in size. It sold for \$138 per square foot compared to the assessed value of \$120 per square foot for the subject, without any adjustment for site specific variables, including vacancy, supports the assessed value per square foot based on the concept the economies of scale. That is, a similar larger building will sell for a lower value per square foot than a smaller building, all other factors being the same.
- [37] The Board accepts the vacancy rate of 10.95% as determined by Respondent for multi-tenanted warehouses. Using a vacancy rate rounded to 11%, the total assessed value for 2022 is \$2,247,200, rounded.

DECISION SUMMARY

- [38] Based on its consideration of the above reasons, the Board reduces that the 2022 assessed value to \$2,247,200.
- [39] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 9th day of September 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.


L. Loven
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

Documents presented at the Hearing and considered by the Board.

<u>NO.</u>	<u>ITEM</u>
1. A.1	Hearing Materials provided by Clerk (p. 76)
2. C.1	Complainant – Disclosure (p. 185)
3. C.2	Complainant – Chronic Vacancy Legal Appendix (p. 163)
4. C.3	Complainant Rebuttal (p. 166)
5. C.4	Complainant Legal Rebuttal – Red Deer Industrial Part 1 of 2 (p. 152)
6. C.5	Complainant Legal Rebuttal – Red Deer Industrial Part 2 of 2 (p. 142)
7. R.1	Respondent – Disclosure (p. 128)
8. R.2	Respondent – Legal Brief (p. 66)