

**IN THE MATTER OF A COMPLAINT** filed with the Regional Municipality of Wood Buffalo Composite Assessment Review Board pursuant to Part 11 of the *Municipal Government Act* being chapter M-26 of the revised statutes of Alberta 2000 (*Act*).

**BETWEEN:**

XE Leasing Inc. as represented by CVG Canadian Valuation Group Ltd. – Complainant

- and -

Regional Municipality of Wood Buffalo (RMWB) – Respondent

**BEFORE:**

Members:

H. Kim, Presiding Officer

N. Mahgoub, Member

A. McKenzie, Member

Staff:

A. Hawkins, Clerk

This is a complaint to the Regional Municipality of Wood Buffalo Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of the Regional Municipality of Wood Buffalo and entered in the 2023 Assessment Roll as follows:

<b>Assessment Roll Number</b>	8480001790
<b>Civic Address</b>	181 Northland Drive RR1 Conklin, AB
<b>Owner</b>	XE Leasing Inc.
<b>File Number</b>	23-008
<b>Assessment</b>	\$1,826,170

This complaint was heard on October 31, 2023 via videoconference.

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## **BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

[1] The subject property is a 2.04 hectare (5.04 acre) parcel in the hamlet of Conklin, near the south boundary of the Regional Municipality of Wood Buffalo (RMWB). It is districted BI - Business Industrial in the RMWB Land Use Bylaw (LUB) and has improvements consisting of a pole framed warehouse with mezzanine, modular office, mobile home, Quonset and two small modulars serving a communications tower located on the parcel. The site is rectangular, relatively flat with adequate drainage and mostly graveled surface. The property is assessed on the cost approach, based on land at market value of \$1,163,702 and improvements using Marshall & Swift with normal depreciation.

### **ISSUES**

[2] The Complaint Form stated in the grounds for complaint that the assessment is greater than the market value of the property at the valuation date of July 1, 2022 and was inequitable with similar properties. At the hearing, the issues argued were:

1. Should the sale price of the subject in April 2023 and the appraisal in October 2022 be considered in determining its value at the valuation date (July 1, 2022)?
2. Do land sales indicate the assessment of the land component exceeds its market value?
3. Do improved sales indicate the overall assessment exceeds its market value?

### **SUMMARY OF COMPLAINANT'S POSITION**

[3] The property was purchased in November, 2022 as part of a 3-property sale for a total of \$995,000 of which the subject was identified to be \$750,000. Due to delays at land titles, the title transfer was dated April 5, 2023. While the actual transfer was in 2023, the Complainant argued that the sale price was set within a few months of the valuation date, and the sale price of the subject property is generally considered the best indicator of its market value. Assessors often do not accept the sale of a property in establishing market value for the very same property, and consider the subject sale price to be only one of many sales used to estimate the value of the property, but the courts have not agreed with this position. In *697604 Alberta Ltd. v. Calgary (City of)* 2005ABQB512 the court stated that "... the recent sales price ... is in law and, in common sense, the most realistic and most reliable method of establishing market value." Similarly, the court in *Altus Group Ltd v Alberta (City of Edmonton Composite Assessment Review Board)* 2023ABCA35 found that an open market, arm's length sale of the subject is the most compelling evidence of value.

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[4] While this sale occurred after the valuation date, the Complainant presented Court and previous Board decisions that stated that while *post facto* sales could not be used to establish the value, they can be considered to support a trend that was established in the previous year. The Complainant noted that the April 2019 sale of the subject for \$800,000 included in the Respondent's sales appendix also supports the requested assessment.

[5] The Complainant presented an independent appraisal report dated October 27, 2022 with an effective date of October 5, 2022. The purpose of the appraisal was for first mortgage financing, and it valued the property based on the cost approach at \$775,000 and on the direct comparison approach at \$755,000. The value estimate in the appraisal was set at \$755,000 with considerable weight given to the sale of the subject property in April 2019 for \$800,000. The appraisal stated that current market conditions supported a moderately lower sale price for the subject property. This third-party professional appraisal supports the sale of the subject at \$750,000.

[6] The Complainant noted that the appraisal report and the assessment value for the subject improvements based on the cost approach were very similar, and the difference was in the market value of the land, with the appraisal valuing it at \$25,200/ac while the Respondent set it at \$230,855/ac. The Complainant presented three comparable land sales between February 2018 and May 2021:

- Comparable 1 is a 5.07 ac parcel in the same industrial yard as the subject. It sold in September 2019 for \$22,978/ac. At the time of the sale, the subject was treed whereas the subject has been mostly cleared.
- Comparable 2 is a 11.69 ac rural vacant lot in Thorhild with exposure to Highway 827 and similar attributes to the subject that sold in February 2018 for \$22,978/ac.
- Comparable 3 is a 6.42 ac industrial parcel located in the Town of Barrhead that sold in May 2021 for \$54,517/ac. It has a superior location and exposure to traffic.

An analysis of the sales with qualitative adjustments supports a market value for the subject land at \$30,000 per acre, which, added to the improvement cost as assessed would result in an overall value of \$722,820.

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[7] The Complainant stated the cost approach for assessment valuation is not widely used, typically only used for properties under construction or when there is limited market data available. Most appraisal reports, including the appraisal of the subject, rely on the direct comparison approach. The Complainant presented appraisal texts and articles detailing the limitations of the cost approach. The application of the cost approach, basing value on actual costs at the time of construction, is likely to overvalue the improvements and does not account for market changes in the industry, or super adequacy. As such, the direct comparison approach – comparing the subject to similar properties on a price per square foot basis – is more commonly used by both assessors, and appraisers to determine fair market value.

[8] The Complainant presented four sales of small warehouses with low site coverage that sold between April 2018 and December 2021 for \$69 to \$276 per square foot (sf) for an average and median of \$140 and \$108/sf respectively, compared to the subject assessment at \$338/sf. Comparables 2 and 4 are the most similar and support \$128 to \$276/sf. The upper end of the range is an income producing warehouse located in Fort McMurray, superior to the subject. The lower end of the range is in a similar industrial yard near Lac La Biche, larger than the subject; therefore, an upward adjustment should be applied. With the necessary qualitative adjustments, a more appropriate rate for the subject is \$145/sf resulting in a value of \$783,000 which aligns with the subject's sale price and the appraisal report.

[9] In rebuttal, the Complainant argued that the sales presented were relevant, notwithstanding their location in other municipalities, and presented a board order in which both parties reached beyond the municipality to find sales comparison indicators. The legislation does not prohibit the use of sales outside the municipality in determining value for mass appraisal.

[10] In conclusion, the Complainant argued that in order for an assessment to be determined accurate, it must be deemed reasonable and fair. The use of the cost approach to valuation is incorrect and leads to an unfair market value. The subject is an industrial warehouse, and an investor would examine prior sales to determine an appropriate value at which to purchase, and not construction material costs. The sale of the subject, a third-party appraisal report, and market sales support a lower value per square foot being applied to the subject property as follows.

Sale of Subject	\$750,000
Appraisal Report	\$755,000
Direct Comparison	\$783,000

The Complainant requested assessment be reduced to \$775,000.

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**SUMMARY OF RESPONDENT'S POSITION**

[11] The sale of the subject property was not a typical market transaction. At the time of purchase, three properties were included in the transaction, all of which were owned by RLK Holdings Inc. The property owner advised that their company had worked with the owner of RLK Holdings Inc. before the purchase; therefore, the Respondent argued that the sale was a non-arm's length sale, as they were related parties. Similarly, the April 2019 sale of the subject to RLK Holdings Inc. involved the previous owner wanting to divest, and was therefore also considered not to be an arm's length transaction.

[12] The Respondent disputed the relevance of the appraisal report. It is dated October 2022, over 3 months past the valuation date, and the purpose of the report is first mortgage financing. It uses various properties outside of the municipality, which is acceptable for appraisal; however, for assessment, all sales must be within the region in which they are being assessed to comply with the *Act* and associated regulations.

[13] The Respondent noted that the Complainant's land sales were not comparable to the subject. Comparable 1 was purchased by the RMWB in 2019 after learning that the site was unserviceable due to a seasonal stream running through it, as evidenced by an email from Land Management. The Respondent submitted a photograph from 2014 showing the extent of the seasonal creek which runs through the centre and east side of the parcel. This parcel is mostly raw, with some fill that was added from the adjacent lots when they were developed, and is not at all comparable to the subject. Comparables 2 and 3 should not be considered as they are outside the RMWB. Similarly, the Complainant used three improved properties from Lac la Biche to derive value per sf of building, and did not provide LUB excerpts from the other municipalities to determine whether the allowable uses are comparable to the subject. The one improved sale in RMWB, in Fort McMurray, is for one unit in a 34-unit condo warehouse on 5.22 acres of land. It is less than half the size of the subject building with no land, and is not comparable to the subject property. Further, the Complainant's value per sf analysis does not assign value to the other improvements on the parcel, but they clearly exist, and must be assessed.

[14] The Respondent noted that the major economic driver in Conklin are the two major oil sands companies operating around Christina Lake. There are multiple camps for staff housing; however, Conklin is the closest and most accessible community to these operations. The Respondent provided three sales and one listing in the RMWB to show that the range of values for developed land within the rural and hamlet regions would be between \$60,000/ac to \$652,073/ac.

- Comparable 1 is a 21.275 ac parcel in Conklin that sold in January 2016 for \$115,629/ac. It is the most recent arm's length sale of land in the area, and although dated, shows what land with less utility and greater size can accomplish in the area.

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- Comparable 2 is 2.147 ac in Rickards Landing that sold July 2021 for \$652,073/ac. Land in this industrial park has consistently sold for over \$500,000/ac since it was first developed.
  - Comparable 3 is 0.6 ac in Fort Chipewyan that sold August 2021 for \$60,000/ac. It is a fly in/out or boat in/out community with an ice road in the winter that is open about 3 months of the year depending on weather conditions. Due to remoteness, lack of steady access and industry in the area, the Respondent considers this to be the lowest value that one could expect to buy developed land in the RMWB.
  - A listing in Conklin for 0.65 ac of commercial land was included due to the lack of arm's length sales in Conklin. It was listed on August 1, 2023 at \$210,000 or \$323,076/ac. Due to its size and being an unsold listing, this would be at the high end of what a commercial property in Conklin could achieve on a per acre basis.

[15] The Respondent presented four improved sales in RMWB between November 2016 and May 2022 for \$181 to \$1,067/sf for an average and median of \$607 and \$591/sf respectively.

[16] The Respondent's surrebuttal included information respecting primary economic drivers in Barrhead and Thorhild compared to RMWB, to which the Complainant objected, stating it was not responding to information in the rebuttal document. The Respondent agreed to strike the first two pages of the surrebuttal document. In surrebuttal, the Respondent argued that the RMWB allows a much greater range of uses in BI than the industrial zoning of the Complainant's land sales in Barrhead and Thorhild and the sales were therefore not comparable. The Respondent also presented an analysis of historical oil prices to show that the Respondent's Comparable 1 in 2016 was not at the peak of an oil boom and should be considered an indicator of market value for the subject.

[17] In conclusion, the Respondent stated that with the sales available to analyze and no market evidence to the contrary, the subject land value is fair and equitable with other properties in the same region, and the assessment should be confirmed.

## **FINDINGS**

1. The sale price of the subject in April 2023 is *post facto* but may be considered for trending purposes to support a market value at the valuation date.
2. The land sales presented by both parties are too dissimilar from the subject to be a compelling indicator of the market value of the subject land.
3. The improved sales presented by both parties are too dissimilar from the subject to be a compelling indicator of the overall value of the subject property.

## **DECISION**

[18] The assessment is reduced to \$800,000.

## **REASONS**

[19] The CARB found the sales provided by both parties to be too dissimilar from the subject, in size, location and characteristics to support a market value for the subject land or the overall value of the property. The appraisal was effective October 2022, after the valuation date, and was prepared for first mortgage financing purposes; therefore, the CARB gave it little weight.

[20] The CARB recognizes that the sales that did happen are the only market evidence that can be relied on, and while it is reasonable to look at market evidence from other municipalities that have similar characteristics, the qualitative adjustments were subjective and did not provide a compelling estimate of market value for the subject. The subject property sold in April 2019 and again in April 2023. The CARB does not agree that a prior business relationship such as landlord/lessee causes the parties to be related such that a sale can be considered non-arm's length. While a lessee might potentially be more motivated than a typical purchaser, there would be no reason for a vendor to accept a lower than market offer to purchase from a lessee. Similarly, a vendor seeking to divest cannot be considered to be more motivated than any other vendor, and, in the absence of evidence that the parties in the two sales were in fact related parties in the usual sense, the CARB considers the two sales to have been arm's length, open market sales.

[21] While the 2023 sale was *post facto*, the 2019 sale was three years prior to the valuation date and within the typical analysis period. The CARB notes that time adjustment was not applied in the sales presented by the Respondent; therefore, the \$800,000 sale price in April 2019 is the most compelling evidence of market value of the subject property and is supported by the *post facto* sale. Accordingly, the CARB determined that the assessment should be reduced to the 2019 sale price of \$800,000.

[22] The decision of the Composite Assessment Review Boards is final and binding on all parties. This decision may be judicially reviewed by the Court of King's Bench pursuant to Section 470(1) of the *Municipal Government Act, RSA 2000, c M-26*.

Dated at the Regional Municipality of Wood Buffalo, in the Province of Alberta, this 29<sup>th</sup> day of November, 2023.

FOIP s. 17(1)

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H. Kim, Presiding Officer



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## APPENDIX A

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### DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

<b>Exhibit Number</b>	<b>Description</b>
C1	Complainant Disclosure Part 1
C2	Complainant Disclosure Part 2 – Appraisal
C3	Complainant Rebuttal
R1	Respondent Brief
R2	Respondent Disclosure Waterbody Assessment
R3	Respondent Appendix – Sales info
R4	Respondent Surrebuttal

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## APPENDIX B

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### REPRESENTATIONS

<b>Person Appearing</b>	<b>Capacity</b>
G. Smith	CVG, Complainant Representative
S. Bosgra	Respondent Representative
S. Kim	Respondent Observer

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## APPENDIX C

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### LEGISLATION

#### *Municipal Government Act*

- 293(1) In preparing an assessment, an assessor must, in a fair and equitable manner,
- (a) apply the valuation and other standards set out in the regulations, and
  - (b) follow the procedures set out in the regulations.

#### *Matters Relating to Assessment and Taxation Regulation*

- 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.
- 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.
- 7(1) The valuation standard for a parcel of land is
- (a) market value, ...