

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

**BETWEEN:**

1406676 Alberta Ltd., as represented by Avison Young Valuation and Advisory Services  
– Complainant

- and -

Regional Municipality of Wood Buffalo (RMWB) – Respondent

**BEFORE:**

Members:

D. Roberts, Presiding Officer

A. McKenzie, Member

S. Schaffer, Member

Staff:

A. Hawkins, Clerk

**BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

[1] A hearing was convened on September 29, 2022 in the Regional Municipality of Wood Buffalo in the Province of Alberta to consider a complaint about the assessment of the following property:

<b>Assessment Roll Number</b>	30602870
<b>Civic Address</b>	280 MacLennan Cres.
<b>Owner</b>	1406676 Alberta Ltd.
<b>File Number</b>	ARB 22-031

### **PROCEDURAL MATTERS**

[2] The CARB derives its authority to make decision under Part 11 of the Municipal Government Act, R.S.A. 2000, c. M-26.

[3] The parties confirmed that they had no objections to the composition of the Board.

[4] The Board confirmed it had no bias in relation to the matters.

### **PRELIMINARY MATTERS**

#### ***Issue***

[5] The parties introduced additional testimonies, questions, arguments, and summaries with respect to file ARB 22-031. The parties requested that for file ARB 22-031 the testimonies, questions, arguments, and summaries pertaining to the capitalization rate argument be carried forward from file ARB 22-030.

#### ***Position of the Parties***

[6] Both parties agreed to the request.

### **PRELIMINARY DECISION**

[7] The Board agreed to carry forward as requested

### **REASONS ON PRELIMINARY DECISION**

[8] The parties agreed to the request and the Board accepted the recommendation.

[9] It is so ordered.

### **ISSUES**

<b>Issue identified on the complaint form</b>	<b>Assessment Amount</b>	<b>Requested Value</b>
An Assessment Amount	\$3,883,770	\$3,353,500

### **SPECIFIC ISSUES**

[10] Is the assessed area of the main floor 15,000-sf, or should it be 15,198-sf? The Complainant accepts the rental rate of \$27.25/sf.

[11] Is there a mezzanine level of 780-sf, and should it be assessed at \$17.99/sf?

[12] Is the capitalization rate applied in the income approach to valuation of 8.50% correct, or should the capitalization rate be 9.50%?

### **MERIT MATTERS**

#### ***Position of the Complainant***

[13] The Complainant provided a 4-page document with complaint forms which was entered as an exhibit as Complainant Disclosure C-1. A second 23-page disclosure document with the merit disclosure information was entered as an exhibit as Complainant Disclosure C-2.

[14] Initially the Complainant requested the main floor rent be reduced and that an excess land calculation be removed from the assessment. It later advised that the main floor rent rate was no longer at issue, and the excess land had been resolved with the Respondent with agreement to remove it from the assessment.

*Issue #1 - Is the assessed area of the main floor 15,000-sf, or should it be 15,198-sf? The Complainant accepts the rental rate of \$27.25/sf.*

[15] The Complainant identified that based on its information, and specifically a copy of the rent roll, the main floor leasable area should be recorded as 15,198-sf, rather than the 15,000-sf currently assessed.

[16] The Complainant advised that it has initially taken issue with the rental rate; however, based on the Respondent's disclosure, that aspect of its complaint was withdrawn.

*Issue #2 - Is there a mezzanine level of 780-sf, and should it be assessed at \$17.99/sf?*

[17] The Complainant submits that the Respondent is assessing a 780-sf area as mezzanine, at a rate of \$17.99/sf. The Complainant testified that there is no mezzanine level in the subject property, and there was no mezzanine on the rent roll of the subject property. Any reference to a mezzanine is in error and it should be removed from the assessment.

*Issue #3 - Is the capitalization rate applied in the income approach to valuation of 8.50% correct, or should the capitalization rate be 9.50%?*

[18] The Complainant provided an analysis of six (6) sales which occurred in the previous 30 months. The six (6) comparable sales included five (5) properties, with one property (145 McMillan Rd.) selling a second time. The years of construction included three (3) properties that were built in 1976, 1978 and 1981. The remainder were constructed in 2007 and 2008. The subject property was built in 1998. As well, the properties ranged in size between 6,400 square feet (sf) and 39,205 sf. The subject is 15,198- sf.

[19] The Complainant advised that they included third-party sale verification reports from “The Network”. The sales reporting documents included the selling price and identified either Net Operating Income (“NOI”) to calculate the capitalization rate or provided the capitalization rate.

[20] The Complainant testified that the analysis of the six (6) sales determined capitalization rates between 6.68% and 10.94%, and the average of the sales was 9.21% and the median was 9.37%. The Complainant submitted that the proposed capitalization rate of 9.50% was reasonable.

[21] The Complainant also identified that Sale Index 4 produced a capitalization rate of 6.68%, which is an outlier. If that sale were removed from the analysis, the median would be 9.03%, and the average would be 9.63%.

[22] The Complainant reviewed each of the six (6) sales and opined that they supported the requested capitalization rate of 9.50%.

[23] The Complainant was questioned on the sales documents.

- a) The Respondent submitted that the sale of Index 1 and Index 3, were the same property with one sale in December 2018 and the other in October 2019. In both cases the NOI was the same, and the Respondent asked if this was correct, as it seemed odd that separate owners would have identical NOI. The Complainant confirmed that was what was reported.
- b) The Board questioned whether Index 1 was a market value transaction, given that it was reported to be a sale motivated by insolvency. The Complainant confirmed the insolvency may have affected the purchase price.
- c) The Board also questioned Index 2 as a sale to an owner-occupied purchaser. The sales document referred to a lease for \$55/sf prior to the sale as being the basis for the capitalization rate. The Complainant confirmed this.

- d) The Board questioned Index 3, and whether it was a valid market sale as it was recorded as having a vendor take-back mortgage. The Complainant was unable to provide the terms of the vendor take-back and whether it may have influenced the sale price.
- e) The Board queried Index 5, as it was reported as being vacant at the time of the sale. If so, how was NOI calculated to determine the capitalization rate? The Complainant confirmed there was no further information to support the NOI or capitalization rate.
- f) The Board also questioned whether Index 6 was a valid market transaction as the sale document noted that it was a sale lease back. The Complainant was unable to advise whether the sale and lease back affected the validity of the transaction.

[24] The Board also inquired as to how a capitalization rate of 9.50% was derived from an average of 9.21% and a median of 9.37%. The Complainant submits it understood that the Respondent's practice is to round up amounts; however, the Complainant conceded that rounding up was advantageous to it.

#### *Conclusion*

[25] The Complainant submits that if the main floor area is corrected to 15,198-sf, the mezzanine level is eliminated and the capitalization rate is changed to 9.50%, the assessment would change to \$3,353,500, which was the requested value.

#### *Position of the Respondent*

[26] The Respondent provided a 51-page merit disclosure document which was entered as an exhibit as Respondent Disclosure R-1. A second 58-page disclosure document with its Law and Legislation Brief was entered as an exhibit as Respondent Disclosure R-2.

[27] The Respondent confirmed the excess land calculation had been resolved.

*Issue #1 - Is the assessed area of the main floor 15,000-sf, or should it be 15,198-sf? The Complainant accepts the rental rate of \$27.25/sf.*

[28] The Respondent relied on its assessment and submitted the main floor area is 15,000-sf.

*Issue #2 - Is there a mezzanine level of 780-sf, and should it be assessed at \$17.99/sf?*

[29] The Respondent's position is that there is a 780-sf mezzanine level, and that it is correctly assessed at \$17.99/sf.

[30] The Respondent submits that it reviewed historical building permits and relied on them to determine there was a mezzanine. In questioning the Respondent confirmed that the building permits identified were not provided in its disclosure information.

[31] The Respondent also testified that it had requested an inspection of the property and were denied access by the agent. Accordingly, the Respondent's position is that there is a mezzanine level and it should be assessed.

*Issue #3 - Is the capitalization rate applied in the income approach to valuation of 8.50% correct, or should the capitalization rate be 9.50%?*

[32] The Respondent confirmed the assessment of the subject property was by applying the income approach. The Respondent confirmed that it requested Assessment Request for Information (ARFI's) from its property owners and uses the information to determine typical rates for comparable properties. The Respondent submits that this meets the requirements for mass appraisal, as legislation directs.

[33] The Respondent also testified that they used sales information from July 1, 2017 to June 30, 2021 to derive the typical amounts (such as rent, vacancy, operating expenses, non-recoverable expenses) which are then used to create assessments. In questioning, the Respondent confirmed that they prepared information in order to determine capitalization rates, which included time adjustments to sale prices ("TASP"). The Respondent also confirmed in questioning that the information as to how they derived capitalization rates was not provided in their disclosure.

[34] The Respondent provided an analysis of the six (6) sales presented by the Complainant. That analysis included the same information that the Complainant provided; however, it substituted the amount of NOI to be based on the typical inputs used for July 1, 2021 rather than the information provided by The Network.

[35] Based on the Respondent's analysis, the median capitalization rate changed to 8.46%, which the Respondent submits supports the capitalization rate of 8.50% for four (4) of the properties and 9.00% for two (2) of the properties.

[36] The Complainant and the Board questioned the Respondent further on how the analysis was arrived at, and the Respondent confirmed the basis was not to demonstrate how the capitalization rate of 8.50% was arrived at for the subject property, the analysis

was to demonstrate that the Complainant's sales, when using the July 1, 2021 typical inputs supports the capitalization rate. In further questioning, the Respondent confirmed that the analyzed sales were not TASP and regardless of when the sale occurred the NOI was used from July 1, 2021. Therefore, a sale from December 2018 was not time adjusted and the NOI applied to calculate the capitalization rate was based on July 1, 2021 parameters.

[37] The Respondent opined that by using this methodology, the analysis was for fee simple leases where the Complainant's information would be more akin to leased simple lease rates. The Respondent confirmed it assessed based on fee simple property.

#### *Conclusion*

[38] The Respondent requested that the assessment be confirmed with the excess land assessment calculation being removed.

#### **DECISION**

*Issue #1 - Is the assessed area of the main floor 15,000-sf, or should it be 15,198-sf? The Complainant accepts the rental rate of \$27.25/sf.*

[39] It is the Decision of the CARB to amend the main floor area from 15,000-sf to 15,198-sf.

*Issue #2 - Is there a mezzanine level of 780-sf, and should it be assessed at \$17.99/sf?*

The Board accepts that there is no mezzanine level and therefore no assessed area, and it should be removed from the assessment.

*Issue #3 - Is the capitalization rate applied in the income approach to valuation of 8.50% correct, or should the capitalization rate be 9.50%?*

[40] The Board does not amend the capitalization rate.

#### *Conclusion*

[41] Based on the 15,198-sf main floor area at a typical market rental rate of \$27.25/sf, no mezzanine, and no excess land, the Net Operating Income would reduce to \$318,582. Applying a capitalization rate of 8.50%, the assessed value would be \$3,748,028, truncated to \$3,748,020.

**REASON FOR DECISION**

*Issue #1 - Is the assessed area of the main floor 15,000-sf, or should it be 15,198-sf? The Complainant accepts the rental rate of \$27.25/sf.*

[42] The Board accepts increasing the assessed area from 15,000-sf to 15,198-sf, proposed by the Complainant. The Complainant provided a copy of the subject property rent roll which supported the 15,198-sf leasable area.

[43] The Respondent took no position with respect to this issue.

*Issue #2 - Is there a mezzanine level of 780-sf, and should it be assessed at \$17.99/sf?*

[44] The Complainant's position was that there was no mezzanine level, and also relied on the rent roll which does not indicate there is a mezzanine level.

[45] The Respondent could have provided evidence of a building permit for the mezzanine level however did not do so.

[46] In response to the Respondent's request for an inspection, the Complainant submits it did not deny the request; rather it submitted the inspection should be for the 2023 taxation year and not the 2022 taxation year.

[47] The Board relied on the rent roll and that the Respondent was unable to provide any information to confirm the mezzanine level existed

*Issue #3 - Is the capitalization rate applied in the income approach to valuation of 8.50% correct, or should the capitalization rate be 9.50%?*

[48] The Board found that the evidence from both parties concerning the capitalization rate was insufficient to warrant amending the assessment.

[49] The Complainant provided six (6) sales for consideration. Those sales included an insolvency sale, a vendor take-back, and a sale lease back. All of these would not be typical market transactions. Another sale was NOI based on a prior lease of \$55/sf, and there was no evidence that this was reasonable. As well, the sale of a vacant property was included and it provided a NOI when it was vacant. The remaining sale would be Index 4, which was at 6.68% and the Complainant admitted it was an outlier. Therefore, all of the sales should receive limited weight in the Board's determination.

[50] In addition, based on the Respondent's disclosure, the properties are not alike in that four (4) have a capitalization rate of 8.50% and two (2) have a capitalization rate of



9.00%. This suggests that the properties may not be assessed using the same inputs. This information was not available to the Board.

[51] The Respondent also provided insufficient evidence. It did not provide any analysis of how it determined the capitalization rate for the subject, or properties similar to the subject. It testified that it had that information but did not provide it in their disclosure. Instead, they critiqued the Complainant's sale by substituting NOI from July 1, 2021 and applied the unadjusted sale price of the sales on the sale date to calculate a capitalization rate. This information is not only insufficient, but it also fails to validate how the Respondent arrived at the capitalization rate for the subject.

[52] The Board also considered the Complainant's proposed "rounding" to 9.50%. This amount exceeds the average and the median, of 9.21% and 9.37% respectively. Rounding to 9.50% would appear to be high in the Board's opinion.

### *Conclusion*

[53] Based on the evidence provided to the Board, there is sufficient evidence to amend the main floor area to 15,198-sf. There is insufficient evidence to confirm the existence of the mezzanine area, therefore it is removed from the assessment. There is also insufficient justification for amending the capitalization rate.

[54] Based on the 15,198-sf main floor area at \$27.25/sf, no mezzanine, and no excess land, the Net Operating Income would reduce to \$318,582, and applying a capitalization rate of 8.50%, the assessed value would be \$3,748,028, truncated to \$3,748,020.

[55] In coming to its conclusion, the Board has carefully reviewed the provisions of the *Municipal Government Act* ("MGA"), the *Matters Relating to Assessment Complaints Regulation* ("MRAC") and the *Matters Relating to Assessment and Taxation Regulation* ("MRAT").

[56] It is so ordered.

### **DISSENTING OPINION**

[57] There was no dissenting opinion.

[58] The decision of the Composite Assessment Review Boards is final and binding on all parties, subject only to appeal to the Court of King's Bench on a question of law or jurisdiction with respect to the decision in accordance to section 470 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 12<sup>th</sup> day of October, 2022.

**FOIP s17(1)**

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D. Roberts, Presiding Officer

## **APPENDIX A**

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### **DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB**

<b>Exhibit Number</b>	<b>Description</b>
C-1	Complaint Form (4-pages)
C-2	Complainant Disclosure (23-pages)
R-1	Respondent Disclosure (51 pages)
R-2	Respondent Law & Legislation Brief (58 pages)

## **APPENDIX B**

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### **REPRESENTATIONS**

<b>Person Appearing</b>	<b>Capacity</b>
J. Carr	Agent, Avison Young Valuation and Advisory Services
Q. Dong	Assessor, Regional Municipality of Wood Buffalo
J. Peyton	Assessor, Regional Municipality of Wood Buffalo
C. L. Chiasson	Observer, Regional Municipality of Wood Buffalo

## **APPENDIX C**

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### **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, AR 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, 2018, 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.