



Complaint ID 0263 1682
Roll No. 676101348

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: October 21, 2022

PRESIDING OFFICER: Brenda Hisey
BOARD MEMBER: Dennis Dey
BOARD MEMBER: Don Wielinga

BETWEEN:

Infinity Downs Corporation

Complainant

-and-

Red Deer County

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 Red Deer County as follows:

ROLL NUMBER: 676101348

MUNICIPAL ADDRESS: 103 303A Larch CL

ASSESSMENT AMOUNT: \$472,040

The complaint was heard by the Central Alberta Regional Assessment Review Board on the 21st day of October 2022, at the Red Deer County Centre.

Appeared on behalf of the Complainant: Gordon McIntosh

Appeared on behalf of the Respondent: Mike Arnold & Cole Castellan

DECISION: The assessed value of the subject property is confirmed at \$472,040.

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 non-residential condominium unit located in the Piper Creek Business Park of Red Deer County. The subject is an interior unit with 2,827 ft², rectangular in shape that faces Larch Close. It is within Building A of a condominium complex that has two structures both built in 2016. The development has nine industrial mixed use condominium spaces including the subject. There is 989 ft² of office space, a lunchroom and bathroom in this finished unit.

PRELIMINARY MATTERS

- [3] The Presiding Officer confirmed that no Board Member raised any conflicts of interest regarding matters before them.
- [4] Neither party raised any objection to the panel hearing the complaint.
- [5] Evidence and argument for the five properties under appeal by Infinity Downs Corporation (roll numbers 676101346, 676101347, 676101348, 676101352, 676101353) would be carried forward to all files as agreed by the parties and approved by the Board.
- [6] The Complainant requested parts of his disclosure be sealed regarding the marketing strategy used for the condominium complex. However, could not direct the Board to specific pages or sections as it was integral to his entire argument. The Board noted these concerns and confirmed the decisions and hearing were public, but that it would weigh the evidence and assess the need to include values if the decision did not turn on these matters.

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

- [7] The Complainant stated the assessment for the subject property exceeds market value due to the following issues:
- I. Special financing and sales incentives were not considered when assessing the real market value of the units within the condominium complex.
 - II. The market value sale comparisons used by the Red Deer County Assessment department are superior to the subject.
 - III. The increased sale prices due to additional construction costs of corner units with side windows, was not taken into consideration when assessing inferior interior units within the complex that did not have side windows.

- IV. The County has valued the subject property's condominium complex with metal framing when the structures are in fact wood framed.
- V. The land value assigned to the subject is unfair and not equitable when consideration is given to the varying sizes of the units within the condominium complex.

Special Financing and Incentives

- [8] The Complainant referred to the *2021 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual*, page 23, paragraph 3, article 3.3.1:

"If a buyer received additional benefits, the market value of the non-real estate benefits should be subtracted from the sales price".

This statement suggests the sale price of the condominium unit owned by the Complainant should be reduced by the value of the financial benefits negotiated during the sale of the subject.

- [9] The Complainant stated that a vendor take back (VTB) mortgage with lower rates, a delayed payment schedule, a reduced down payment and free condo fees for a negotiated time frame, were tools used in varying degrees as part of a marketing strategy that provided financial benefit to the buyer.
- [10] Details of these mortgages and incentives for various sales (units #3, #4, #5, and #9) within the subject's condominium complex were provided by the Complainant. From these recent transactions the Complainant suggested the vendor financing provided an extra risk to the seller. Conversely, the buyer could benefit from free fees, or reduced payments that would indicate inflated sale values for these properties. Therefore, the market value of the non-real estate benefits should be subtracted from the sale price.

Superior Market Value Comparisons

- [11] Additionally, the Complainant suggested that the County had used superior market value comparisons for the determination and support of the current assessment for the subject property. These sales included two storey buildings with superior locations, construction, and building design. Furthermore, one of the comparables provided by the Respondent included a storage yard for each unit.
- [12] The subject property is a one storey wood framed building with vinyl windows and no storage yards. All the comparables provided by the Respondent are superior to the subject.

Added Value of Side Windows

- [13] The Complainant also noted the County had not recognized the additional construction cost and value for side windows within the corner units of the subject's condominium complex. The market sales used for comparison from the subject's complex (units #5 and #9) were not appropriately recognized by the County as superior properties. The subject property is an interior unit; it is unfair to use these superior sales to set values for all the units as it creates unfair and higher values for the entire complex.

- [14] A value analysis was provided by the Complainant for unit #5 (corner) at \$475,000 to unit #4 (interior with no side windows) at \$436,800. The difference of \$34,098 was accredited to the extra windows in the corner unit. This attribute was not considered by the County in their assessment of the interior condominium units within the development.

Metal Framed vs Wood Framed

- [15] It was the Complainant's contention that the subject property had been assessed as a superior metal framed structure, which is incorrect. The buildings within the subject's complex were of wood construction and the assessments should be reduced for this misinterpretation.

Unfair Land Values for Various Condominium Units

- [16] The Complainant identified the various unit sizes within the condominium complex and suggested the range in sizes (1,351 ft² to 2,863 ft²) should warrant a variation in the land valuation for each unit. The County has used the same \$150,000 land value for all the units within the development. This should be recognized as an obvious error as land values are based on the size of a property.
- [17] The Complainant argued that larger units typically have more employees, more employee vehicles and use more of the common property area. This would suggest the same land value applied to all units is not a fair practice.
- [18] A more appropriate calculation of assigning a land value that had a correlation of common property unit factors was introduced as a more accurate method for the assignment of land value.
- [19] Additionally, the Complainant argued the industrial land across the street from the subject property is selling for \$295,000 per acre, which is less than the \$328,000 per acre paid for the subject property when it was purchased in 2015. The land values for the subject property are unfair.

Conclusion

- [20] The Complainant stated the higher assessed values and subsequent higher property taxes makes it more difficult to sell or lease properties in the subject's condominium complex. The Complainant provided a chart that showed the monthly cost of mortgage, property taxes, condo fees and insurance versus an actual monthly rental lease rate. This information confirmed the property could not generate enough in yearly rents to attract rental property investors.
- [21] The Complainant requested a revised \$430,000 assessment for the subject property (unit #3).

Position of the Respondent

- [22] The Respondent described the Market Modified Cost Approach methodology used to assess the subject property and the legislative requirements for market value by application of the mass appraisal process. This valuation method consists of determining a cost for the improvements (Marshall & Swift Valuation Manual) then adding a value for the land component. The result is modified (adjusted) to reflect market value based on pertinent sales and listings.
- [23] An overview of the subject was provided to the Board using assessment details, photographs, and aerial maps.

- [24] The Respondent argued the current assessment was fair and equitable at \$472,040, compared to the requested amount of \$430,000, which is \$42,040 less than the current valuation and \$34,406 less than a post facto sale of the subject in May 2022.

Special Financing and Incentives

- [25] The *2021 Recording and Reporting Information for Assessment Audit and Equalized Assessment Manual*, quoted by the Complainant was given further clarification. It was the Respondent's contention that if the vendor received a benefit, the market value of the non-real estate benefits should be added to the sale price. If the vendor incurred an extraordinary obligation as a result of the sale, the value of the obligations should be subtracted from the sale price. The Respondent argued that while a buyer may realize marginal benefits from the financing and incentives offered, the vendor would realize benefits as well.
- [26] It was the Respondent's contention that the Complainant had offered mortgage rates at the lower end of conventional mortgage ranges for five-year term rates, as shown from evidence provided by the Bank of Canada. Therefore, the vendor realized a benefit from a reasonable interest rate with a secured loan (interest is maintained on title). The vendor has the ability to have the property returned if financial obligations of the purchaser are not met. The property could then be leased or resold with a reset to the amortization period, which could also be considered a benefit to the vendor.
- [27] The Respondent also indicated that a reduced down payment could be beneficial to both buyer and seller. The buyer would not be required to have a higher initial cost for the purchase, while the vendor receives interest on these monies gained through amortization from the VTB mortgage.
- [28] The Respondent also suggested that the Complainant has set the market for all the units in the subject property's complex, as no other entity has listed or sold a unit within this development.

Superior Market Value Comparisons

- [29] The sales and listing of units within the subject property's condominium complex were used as the most comparable by the Respondent. Then sales of other similar properties (non-residential condominium units, within the same business park) were also reviewed to establish the assessed values for the 2022 tax year.
- [30] The assessment of the subject at \$472,040 (\$166.98/ft²) is supported by sales within the subject's condominium complex:
- I. Unit #9 (1,524 ft²) – rear unit sold in March 2018 for \$177.17/ft² or \$270,000.
 - II. Unit #5 (2,862 ft²) – front corner unit sold in March 2019 for \$165.91/ft² or \$475,000.
 - III. Unit #4 (2,827 ft²) - front interior unit sold in May 2020 for \$154.51/ft² or \$436,800.
- [31] The Respondent suggested that two of the best indicators of market value would be the sale of unit's #4 and #5. They both are similar sized and face the street. Unit #4 had no office finish accounting for a \$27,606 difference from the sale of the subject (unit #3 sold in May 2022 for \$464,406, unit #4 sold for \$436,800).

- [32] Additionally, the Complainant argued that the market comparison at 103 232 Spruce Street was a superior two-storey office development. The Respondent refuted this statement as the two-storey addition was constructed after the sale in 2019; the sale price was for a bare undeveloped unit.

Added Value of Side Windows

- [33] The Respondent proposed the Complainant's claim that corner units with side windows are worth more than interior units had no merit. From a mass appraisal point of view, one pair of sales is not enough to prove or disprove that an adjustment for one attribute is warranted. The Respondent suggested that there would need to be an identifiable trend over time between interior and corner unit sales to be able to determine whether an adjustment was required, and how much that attribute would affect value.
- [34] Although the Complainant bases his opinion on the difference in sale price between units #4 and #5, there was little difference in rental rates (unit #1 rented for \$12.50 per ft² and unit #2 rented for \$12.11 per ft²). The Respondent argued this was a marginal difference considering the property is assessed using mass appraisal principles.

Metal Framed vs Wood Framed

- [35] The Respondent clarified the label "Rigid Frame Metal Building" found in the Assessment Summary from the Marshall & Swift Detail sheet, which did not determine the construction value used in the assessment. Explanations of the different criteria for the cost approach were provided and the standards for cost valuation were reviewed that provides the same Class D building for both metal and wood frame.

Unfair Land Values for Various Condominium Units

- [36] When a cost approach methodology is used in valuation of a property the parcel of land is added to the improvements on it. Therefore, the Respondent stated that each unit's land component needs to be representative of the subdivided individual parcels, not as a component of an un-subdivided total parcel.
- [37] The Respondent suggested that subdivided parcels have more value between them than the original parcel, considering the law of diminishing returns, as there are now multiple parcels each with their own legal entity that can be marketed individually. The courts have recognized that smaller parcels will ordinarily demand higher per acre values than the parcels from which they are taken.
- [38] Furthermore, the Respondent argued the value for the land component is just one input in the overall assessment process.

Conclusion

- [39] To further support the assessment the Respondent provided eight sales of similar types of properties. Three were from the subject's condominium complex and five were from Piper Creek Industrial Park. These properties were built between 2015 and 2020. The price per square foot of these sales ranged from \$154.51 to \$237.50. The assessment of the subject falls within the range at \$166.98/ft². The Respondent noted the three best comparables were from the subject's complex

and the five remaining properties would require a downward adjustment due to the superior interior wall heights.

- [40] A chart of ten listings from the subject's condominium complex were also provided to establish pertinent value indicators and defend the assessment. The price per square foot that these properties were listed for ranged from \$169.50 to \$200.70. Ultimately, two of these properties (five of the listings) sold for \$164.28 and \$177.65/ft².
- [41] The Respondent suggested the recent post facto sale of the subject in May 2022 for \$464,406, provides support for the assessment over the requested value of \$430,000, which is \$42,040 less than the current assessment of \$472,040.
- [42] In conclusion, the Respondent proposed the Complainant had not provided sufficient market evidence to reduce the assessment.

REBUTTAL

- [43] An audio file was played for the Board from the Complainant, which was between himself and an assessor for the Red Deer County. In the discussion the Complainant stated that unit #3 within the subject's condominium complex did not have a typical office finish. The assessor agreed and confirmed that, "What it comes down to, is what is the value". Consequently, the assessment for that unit was reduced from \$500,040 to \$457,780 for the 2020/2021 tax year. The Complainant suggested that the construction value of \$6,500 for improvements did not translate into a premium finished office space as shown in the current assessment for the subject property.
- [44] Prior to the Complainant's presentation of the C.2 and C.3 Rebuttal documents the Respondent objected to information from C.3 as "new" and argued it should not be heard by the Board as it did not meet the criteria for rebuttal evidence.
- [45] The Complainant did not concur that new information should not be heard as the Respondent had referred to a court case that had not been provided in their disclosure document.
- [46] The Board deliberated the objection and confirmed rebuttal evidence, must be both (a) necessary to answer a matter first raised by the Respondent, and (b) information which the Complainant could not reasonably have anticipated when the Complainant first presented its case. The Board is subject to the rules of natural justice; it is not "just" to permit the Complainant to present new evidence in the form of "rebuttal" to bolster its case. If the Complainant could have presented the evidence in its original submission, it should not be permitted to present it after the fact. The Board finds the information found in C3 does not meet the requirements of rebuttal evidence. Furthermore, the Board recognize legal decisions as public information, which may be referenced by either party throughout the hearing process.
- [47] Moving forward with the document entered as C.2 the Complainant refuted the following information provided by the Respondent:
 - a) The Complainant highlighted the post facto sale of unit #2 in August 2022 not June 2022 as shown in the Respondent's information.

- b) The statement made by the Respondent that "conventional mortgages range from 2.88 and 6.88% at the start and 3.46 and 7.46% at the end", was clarified by the Complainant suggesting that lending institutions would not make these loans at 0% to 10% down.
 - c) The Complainant provided evidence that the amortization period and payments were shortened (rather than deferred) for unit #4 resulting in an interest saving of \$3,883.11.
 - d) The Complainant also critiqued the use of the Marshall and Swift manual as typical industrial buildings come with commercial grade windows, door, or forced air furnaces and these items should command a higher valuation.
- [48] The Complainant confirmed that no recent inspections had been made on the subject property, which could have resulted in a reduction to the assessments. The valuation guide provides the user with discretion for costs as adjustments and refinements may be required to recognize the overall value for the property.

BOARD FINDINGS and DECISION

- [49] Although the Complainant has made the initial burden of proof with regard to various issues found in the complaint form, ultimately the Board did not have sufficient evidence to reduce the assessment for the subject property. The cost method applied to calculate market value for the subject, uses typical base values from the Marshall & Swift Manual that have been applied consistently to this property type. The Board finds that applying actual and typical values that mix data sets without support for those adjustments from the marketplace may not produce accurate results.
- [50] The Board acknowledges that without market sales for comparison, or evidence that the overall valuation is incorrect, a quantitative adjustment for each variable is not supported.

Special Financing and Incentives

- [51] The Board finds the VTB mortgage offered to buyers by the vendor, can provide benefits to both parties. The mortgage rates were shown to be commensurate with the lower values from the Bank of Canada, with the lender holding a take-back interest on title. Although there is some risk to the vendor, there is interest provided for that exposure. Additionally, any reduction to the down payments would decrease the buyers' upfront costs, but it would also increase the mortgage values and higher interest earned over the amortization period by the vendor.
- [52] The Board recognizes that additional incentives offered during sale negotiations could be viewed as providing a reduction to the market value, however these fees or payments are marginal in the overall value of the properties.
- [53] The Board relied on the affidavits for value provided by buyers (for sales from the subject's condominium complex), that took advantage of the VTB mortgages and incentives offered by the vendor. These documents indicate no adjustments were made to the market value of the properties for these financial considerations. The sworn affidavits indicate the sale price for the properties were reflective of what would be expected, if sold on the open market by a willing seller to a willing buyer.

Superior Market Value Comparisons

- [54] The Board finds the subject property has been fairly and equitably assessed when compared to sales and listings of comparable properties provided by the Respondent, from the same condominium complex and the same business park.
- [55] The Board placed most weight on the sale of unit #5 as the best indicator of value to the subject. Both are similar sized finished units that face the street. This comparable sold in March 2019 for \$165.91/ft² or \$475,000, supporting the assessment of the subject at \$166.98/ ft² or \$472,040.
- [56] The Board acknowledges the best indicator of value can be the sale of the subject itself. However, this post facto sale (May 2022) cannot be used to set an assessment respecting the valuation date of July 1, 2021.

Added Value of Side Windows

- [57] The Board finds no evidence to support the overall valuation as incorrect. The Complainant was unable to confirm how the market would react to a single attribute such as side windows. The same finding can be applied to specific heating or fixture components.

Metal Framed vs Wood Framed

- [58] The Board was satisfied that the classification for construction from the Marshall and Swift guide was appropriately applied in the cost approach methodology. Both wooden and steel frame buildings are given a Class D rating.

Unfair Land Values for Various Condominium Units

- [59] The Board finds insufficient evidence to change the land value of the subject property. Ultimately an adjustment to the subject's land component would provide an inequitable treatment of similarly assessed properties.

Conclusion

- [60] Throughout the hearing the Board was asked to apply a quantitative value for various items without evidence of how those variables were ultimately valued on the open market. Additionally, the Complainant did not provide a correlation or specifically identify how the reduction had been calculated for the subject property.
- [61] Although the post facto sale of the subject (\$464,406) was given no weight in the calculation of the assessment (\$472,040), it does support the current valuation over the requested \$430,000 value.
- [62] The Board understands that the assessment of the subject property is based on multiple attributes which are combined to calculate a market value. However, it is this overall valuation that must be challenged for a reduction to be considered.
- [63] The Board finds there was insufficient evidence to support a reduction to the current assessment.

DECISION SUMMARY

- [64] The Board finds that the original assessed value is confirmed.
- [65] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 18th day of November, 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.



Brenda Hisey
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 – 32 pages
2. C.1	Complainant submission (24 tabs) – 202 pages
3. C.2	Complainant rebuttal #1 (5 tabs) - 33 pages
4. C.3	Complainant rebuttal #2 (5 tabs) – 37 pages (EXCLUDED)
5. C.4	Audio File
6. R.1	Respondent submission (22 pages and 13 appendices) – 203 pages