CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

Herman and Kifer Holdings Ltd., (as represented by the Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T. B. Hudson, PRESIDING OFFICER
D. Steele, MEMBER
P. Charuk, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER: 201272945

LOCATION ADDRESS: 3919 Richmond RD SW

FILE NUMBER: 68602

ASSESSMENT: $13,190,000

This complaint was heard on the 19th day of July, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *B. Neeson*
- *K. Fong*
- *B. Brazell*

Appeared on behalf of the Respondent:

- *H. Yau*
- *B. Thompson*
- *S. Trylinski*

Board's Decision in Respect of Procedural or Jurisdictional Matters:

By agreement with the Parties, the evidence and argument with respect to complaint File # 68410, will also apply to this complaint. The Board also allowed an opportunity for both parties to present additional argument on the preliminary matters noted below.

Preliminary Matter: The Complainant requested the Board to exclude the Respondent's neighborhood, community shopping centre capitalization (cap) rate "study", and the recreational space lease comparable information from their evidence submission (i.e. Exhibit R1); in compliance with the Matters Relating to Assessment Complaints Regulation (MRAC) Section 9(4).

BACKGROUND:

[1] The Complainant requested that the cap rate "study" included in the Respondent's disclosure document (i.e. pages 30-43 of Exhibit R1), and the recreational space lease comparable information (i.e. pages 11-15 of Exhibit R1), be removed from the hearing process, because the Respondent refused to disclose the information when requested to provide same under sections 299 and 300 of the Act.

[2] The Complainant argued that the Respondent's cap rate "study", and the recreational space lease comparable information, must be excluded from the evidence to be heard by the Board in compliance with MRAC Section 9(4).

[3] The MRAC Section 9(4) regulation states as follows; "A composite assessment review board must not hear any evidence from a municipality that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant".

(4) The Complainant requested the cap rate "study", and the recreational space lease comparable information under the Act Sections 299 and 300 from the City of Calgary Assessment Business Unit (ABU), in a letter received March 30, 2012. The request asked for information with respect to the cap rate "study" used to establish the 2012 typical cap rate for neighbourhood, community shopping centre properties assessed based on the income approach to value, including the subject property. The request also asked for the recreational space lease comparable information specific to the subject property.

(5) On April 13, 2012 the ABU responded that, "There is no obligation under Section 299 to provide all the sales in a valuation model, all the leases in a valuation model, **capitalization rate studies,** vacancy rate studies or any of the other studies that you reference in your letter. In fact the provision of much of the information you are requesting would breach the confidentiality of various sources of information, and is therefore prohibited by law."[**emphasis added**].

(6) The Complainant subsequently filed a non-compliance complaint to the Minister of Municipal Affairs under Section 27.6 of the Matters Relating to Assessment and Taxation Regulation (MRAT).

(7) The Respondent argued that because the alleged non-compliance complaint is before the Minister of Municipal Affairs for resolution, the Board has no jurisdiction to consider the matter under section 9(4) of MRAC.

(a) Issue: Does the Board have the Jurisdiction to Decide the Preliminary Matter?

The Board finds that it has the jurisdiction to decide the preliminary matter in accord with MRAC Section 9(4).

[8] The Board agreed with the Respondent that the Board has no jurisdiction to determine whether the ABU complied with the request for information under the Act Section 299(1); because there was no complaint before the Board at that time. The Complainant's remedy for that alleged non-compliance is provided in Section 27.6 of MRAT.

[9] However, the Board accepts that the Respondent's cap rate "study", and the recreational space lease comparable information could have been an important consideration for the Complainant in evaluating whether the 2012 assessment of the subject property reflected market value; and also in considering the need to file a complaint under the Act Section 460(5)(c).

[10] In the absence of the requested information, a complaint on the assessment of the subject property was filed; and therefore the preliminary matter with respect to MRAC Section 9(4) was properly before the Board.

[11] Section 9(4) of MRAC deals with the failure to disclose evidence to be considered in complaint hearings before the Board as noted previously. In order to apply this regulation, the Board must consider what information was requested and not provided under Section 299.

(a) Issue: Was the ABU Required to Disclose their 2012 Cap Rate "Study" and Recreational Space Lease Comparable Information in Response to the 299 Request?

The Board finds that the ABU was required to provide their 2012 cap rate "study", and the recreational space lease comparable information in their 299 response; because they intended to use the information in defence of the complaint regarding the assessment amount of the subject property.

[12] The disclosure provisions of MRAC have been adjudicated in a recent decision of the Court of Queen's Bench of Alberta Citation: Canadian Natural Resources Ltd. v. Wood Buffalo (Regional Municipality) 2012 ABQB 177. On a Leave to Appeal Application, the Honourable Madame Justice D.A. Sulyma considered the question of the municipality's compliance with the Act Sections 299 and 300.

[13] The decision held the municipality to a high standard of disclosure; stating in part; "the municipality **must,** in accordance with the regulations, comply with a request under the Act Section 299 (1). The intent of Section 299 is clear: it is designed to facilitate disclosure of all relevant information to the taxpayer so as to avoid "trial by ambush" before the CARB. The disclosure provisions are extremely broad. They effectively require a full report. The municipality must deliver or provide access to **all** information relevant to the assessment calculation, not just that requested by the taxpayer. If it were as the CARB says, the taxpayer would forever be caught in a vicious circle, where it would not have access to the information it never knew existed, because it did not request that information in the first place. Not only would this situation be absurd, it would also effectively negate the taxpayer's fundamental right to know the case against them. The words and intent of Section 299 cannot reasonably support such construction". **[emphasis** in the original].

[14] In the case before this Board, the Complainant requested the cap rate "study", and the recreational space lease comparable information from the ABU, in a manner required by the municipality.

[15] The ABU refused to provide the information based on concerns over "breach of confidential sources of information". However, the Act Section 301.1 provides that Sections 299 to 301 prevail "despite the Freedom of Information and Privacy Act".

[16] The Respondent included the 2012 cap rate "study", and the recreational space lease comparable information, in their disclosure to the Board for this complaint hearing: after refusing to provide the same information to the Complainant, in response to their 299 request.

Decision on the Preliminary Matter

The Board accepted the Complainant's request to exclude the Respondent's 2012 cap rate "study" from their evidence submission, in compliance with MRAC Section 9(4). Consequently pages 30-43 of Exhibit R1 were not heard by the Board. Although the Complainant requested that pages 11-15 of Exhibit R1 be removed in respect of the recreational space lease comparables, the Board agreed to remove page 15 only. Pages 11-14 are a matter of public record.

In addition, the Board determined that the Complainant's rebuttal with respect to the Respondent's cap rate "study" evidence (i.e. pages 6-85; and 197-292 of Exhibit C3), should also be excluded.

Property Description:

[17] The subject property is a 2.59 acre parcel of land and is improved with the Glamorgan neighbourhood shopping centre. The centre includes 17,854 square feet (sf.) of below grade bowling alley space, a 7,931 sf. bank, 23.078 sf. of Commercial Retail Unit (CRU) space, and a 6,010 sf. pad site restaurant. The current assessment is $13,190,000 based on the capitalized income approach to assessed value.

Issues:

[A] Does the Requested Cap Rate of 7.75%, Produce a Superior Estimate of Market Value for the Subject Property than the Assessed Cap Rate of 7.25%?

[B] Should the Rent Rate for the Bowling Alley Space be Reduced to $5.50 Per Square Foot (psf.),from the Assessed Rate of $8.00 psf.

Complainant's Requested Value: $11,790,000

Board's Finding in Respect of Each Matter or Issue:

[A]The Board finds that the requested cap rate of 7.75% does not result in an improved estimate of market value for the subject property.

[18] The Complainant submitted their version of a 2012 capitalization rate analysis for neighbourhood, community shopping centres, (pages 50-73 of Exhibit C1); in support of the requested 7.75% cap rate.

[19] Seven sales of neighbourhood, community shopping centre properties similar to the subject were analyzed to establish a typical cap rate; using two methodologies.

[20] The first methodology applied the assessed income for each property at the time of the sale, divided by the sale prices to arrive at a cap rate average of 7.69% for the seven sales.

[21] The second methodology applied the typical market income for each property at the time of sale divided by the sale prices to arrive at a cap rate average of 7.80% for the seven sales. The median cap rate for this methodology was 7.71%

[22] The Respondent raised concerns about the Complainant's methodology(s), but in the absence of their cap rate evidence, resorted to an Assessment to Sale Ratio (ASR) Comparison Table, (page 42 of Exhibit R1) to defend the assessed cap rate of 7.25%.

[23] The ASR's were calculated by dividing the time adjusted sale price of each of the Complainant's seven sales; by the estimate of assessment value produced by applying both the requested 7.75% cap rate, and the assessed 7.25% cap rate to the assessed NOI. The ideal ratio is 1.00; and the closer the estimate of assessed value is to 1.00, the closer the assessment estimate is to market value.

[24] Application of the requested 7.75% cap rate resulted in an average ASR of 0.89, and a median ASR of 0.87 for the seven sale properties. The assessed 7.25% cap rate resulted in an average ASR of 0.95, and a median ASR of 0.93

[25] The Complainant argued that the ASR comparison prepared by the Respondent was not reliable because of the inadequate time adjustment factors used to adjust the sale prices to reflect the valuation date of July 1, 2011. In their rebuttal submission (i.e. pages 112 to 115 of Exhibit C3), they analyzed changes in net operating income (NOI), from the time of sale to the valuation date for each of the sales; and proposed a median time adjustment factor of -11.48% be applied to each of the sale prices.

[26] Application of the proposed -11.48% time adjustment factor to the sale prices, resulted in a median ASR of 1.107 based on the assessed cap rate of 7.25%; and a median ASR of 1.036 based on the requested cap rate of 7.75%.

[27] The Respondent countered that changes in NOI from the time of sale to the valuation date could be attributed to many factors including space allocation, and lease arrangements for example. Without further analysis to eliminate the influence factors other than time, using changes in NOI to establish a time adjustment factor is not appropriate. In addition, they argued that even when the sale prices are not time adjusted, superior ASR results are produced using the assessed 7.25% cap rate.

[B] The Board finds that the typical assessed rate of $8.00 psf. is equitable for the subject below grade bowling alley space.

[28] The Complainant submitted the rent roll for the subject property which includes a ten year lease commencing July1, 2011 at $5.50 psf., for the below grade bowling alley space, (page 38 of Exhibit C1). The Complainant argued that because there were no other similar bowling alley spaces in the immediate vicinity of the subject; the $5.50 psf. rate should be applied in the assessment.

[29] The Respondent submitted the assessments of two similar, albeit larger, below grade bowling alley spaces in SE Calgary in support of the typical city-wide assessed rate of $8.00 psf., (pages 11-14 of Exhibit R1). The Respondent argued that assessment equity would be disturbed if the typical rate of $8.00 psf. was replaced by the actual lease rate of $5.50 psf., for the subject.

Board's Decision: The assessment is confirmed at $13,190,000

DATED AT THE CITY OF CALGARY THIS 21 **DAY OF** August **2012.**

T. B. Hudson
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure Appendix
3. C3	Complainant Rebuttal
4. C4	Complainant MRAC Section 9(4)
5. C5	CARB Decisions
6. C6	Complainant 299 Request
7. R1	Respondent Disclosure
8. R2	Respondent Occurrence Timelines
9. R3	Subject ARFI

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

(a) the complainant;

(b) an assessed person, other than the complainant, who is affected by the decision;

(c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;

(d) the assessor for a municipality referred to in clause (c).

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

(a) the assessment review board, and

(b) any other persons as the judge directs.

For MGB Administrative Use Only

Decision No. 1157/2012-P		*Roll No. 201272945*		
Subject	*Type*	*Sub-Type*	*Issue*	*Sub-Issue*
CARB	Retail	Neighborhood Shopping Centre	Market Value	Disclosure ,Cap Rate, Rent Rate