CALGARY
COMPOSITE 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:

Westpen Properties Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER
J. Mathias, MEMBER
P. McKenna, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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:	**031023500**
LOCATION ADDRESS:	**2618 Hopewell Pl. NE**
HEARING NUMBER:	**67656**
ASSESSMENT:	**$16,990,000**

This complaint was heard on the 30th day of July, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *D. Chabot, Altus Group Limited*
- *R. Brazzell, Altus Group Limited*

Appeared on behalf of the Respondent:

- *C. Neal, City of Calgary*

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

Issue:

[1] Should pages 28 through 30 of the Respondent's disclosure document (R1) be excluded under s. 9(4) of *Matters Relating to Assessment Complaints Regulation,* AR 310/2009 (MRAC)?

[2] The Complainant alleged that, pursuant to s. 299 and s. 300 of the Act, and in accordance with the City of Calgary's requirements, it had made a request for information relevant to the subject Complaint, specifically the rental rate study for suburban offices, but that the Respondent had failed to provide the requested information. Pursuant to s. 9(4), *Matters Relating to Assessment Complaints Regulation,* AR 310/2009 (MRAC), the Complainant requested that the Board exclude pages 28-30 within the Respondent's disclosure document (R1) as it includes properties and leases that were part of the requested study. The Board determined that it would hear the argument on this request and render a decision on it before proceeding to the merits of the Complaint.

[3] The Complainant outlined the following timeline:

1. The Complainant's agents met with the Respondent on February 21, 2012 during the Customer Review Period of January 3 to March 5, 2012 and requested certain information.

2. On March 6, the day following the Assessment Complaint deadline, the Respondent replied that it was not prepared to discuss the matter further.

3. On March 30, the Complainant forwarded to the City a letter dated March 2 (C1, p.57), requesting information pursuant to s. 299(1.1) and s. 300; specifically: the Complainant requested "The rental rate study for each space type identified on the property record for the subject property" - the property being classified as Suburban Office.

4. On April 10, the Complainant again met with the City to discuss the request for a rent rate study but received no information.

5. By letter dated April 13, transmitted April 12, 2012 (C1. P.63), the Respondent, within the timelines established in s. 27.4 and s. 27.5, *Matters Relating to Assessment and*

Taxation Regulation, AR 220/2004 (MRAT), sent a detailed memorandum to the Complainant in response to the March 30 request. The essence of that response was that the City was not required to provide the information requested and/or it was available on its website.

6. On May 9, the Complainant filed a request for Compliance Review (C2, p.63) with the Minister of Municipal Affairs with respect to the Respondent's failure to provide the requested information pursuant to s. 27.6 of MRAT.

7. On June 18, which was the deadline for filing disclosure pursuant to s. 8, of MRAC, the Complainant filed its disclosure in the absence of the information requested in item 3, above.

8. On June 21, the Respondent provided extensive information to the Complainant in answer to item 3 above (C2, p.64), because, as the letter stated, of the Respondent's concerns that CARBs were excluding some of the its documents due to s. 299/300 issues. The June 21 information release of information did not include a rental rate study for suburban office space. The Respondent "invited" the Complainant to attend their offices "to see the data used to determine the assessed rents."

9. On July 16, the Respondent filed its disclosure document (R1) that included the information that the Complainant alleges it requested in item 3, above, but which it did not receive.

[4] At this point, having been questioned by the Board, the Respondent confirmed that she had no issue with the dates outlined above or the description of what transpired on those dates. She confirmed that the disputed information did relate to the rental rate study but emphasized that the information requested was available in the Respondent's offices for viewing after July 21, 2012. She noted that the Complainant had not availed itself of that opportunity.

[5] Mr. Brazzell, for the Complainant, made extensive argument with respect to the intent of s. 299/300 of the Act and its importance in achieving a fair and transparent assessment and complaint process. That argument is provided in pages 45 through 55 in the Complainant's disclosure document C1 and in greater detail on pages 3 through 31 of Rebuttal document C2. The argument is supplemented with the addition of a number of CARB decisions from 2012 contained within the package. Citations from speeches from the floor of the Legislature are included in the written argument as are citations from various decisions of the Courts, along with extracts from various handbooks and texts.

[6] Mr. Brazzell pointed out that there are parallel provisions to s. 299/300 in the Act that provide a benefit to the Respondent and a penalty to the taxpayer. Specifically, s. 295 of the Act requires the taxpayer to provide information on his property to the assessor, within 60 days of the request being made, in order to assist him with the preparation of the assessment. Failure to provide that information prevents the taxpayer from filing a complaint on the related assessment. Similarly, should there be no compliance by the assessor to a s. 299/300 request, the Board, by virtue of s. 9(4) of MRAC, cannot hear any of the evidence that was not disclosed. The Complainant avers that the sections of the Act and Regulations work in tandem with the intent of ensuring that there is a fair and transparent assessment and complaint process.

[7] The Complainant agreed that a response to its request under s. 299/300 of the Act was

sent within the timelines. However, the response was that the Respondent would not provide the information requested. The Complainant's position is that a refusal to provide information is not "sufficient information" as required in these sections of the Act. Further, having already attended the Assessor's office twice, in vain, the Complainant saw no reason to expect that a third visit, well into the disclosure period, would assist it in this year's complaint process.

[8] Ms Neal for the Respondent referenced the arguments made by the City's legal counsel, Ms Gosselin, as found in CARB decision 0916/2012-P. In essence, Ms Gosselin's position, as we understood it from that decision, was: if the information is disclosed, even as little as a week before the hearing, then s. 9(4) of MRAC no longer applies; s. 9(4) of MRAC does not deal with the 15 day timeline for response found in s. 27(4) and s. 27(5) of MRAT; and that the Complainant's remedy is through s. 27(6) of MRAT.

[9] The Board notes that Ms Gosselin was not in attendance at this hearing and therefore did not present her own arguments or address questions from the Complainant or the Board with respect to the Complaint under review. The Board also notes that Ms Gosselin, in CARB 0916/2012–P, appeared to be dealing with a different fact situation than the one that is currently before the Board – one where the information requested was disclosed, albeit only shortly before the hearing.

[10] Ms Neal further argued that, as of June 21, the Complainants were welcome to come into the Respondent's offices to see the information they were requesting. Further, Ms Neal noted that at least the top half of page 28 in R1, which the Complainant was requesting be excluded, is contained on page 30 of the Complainant's document C1. The lower half of disputed page 28 in R1 added only a few additional rental rates in addition to those that are the subject of the complaint. Ms Neal stated that the second half of page 28 is part of the rental rate study for suburban offices and that the information wasn't provided before June 21 or, directly, in the June 21 release of information by the City.

Decision:

[11] The Board excluded the information on the second half of page 28 as well as pages 29 and 30 of R1 from its considerations and further requested that the Complainant identify in her own Rebuttal, C2 and C2A, those pages specific to the Respondent's excluded pages above. The Complainant identified pages 161 through 167 and pages 170 through 175. The Respondent accepted those pages as appropriate and the Board ordered their exclusion from the Rebuttal documents on the basis that what was not disclosed cannot be rebutted.

Reasons:

[12] Section 299 of the Act allows an assessed person to see or receive sufficient information to show how the assessment was prepared for his own property. Similarly, s. 300 of the Act allows an assessed person to see or receive a summary of the assessment of any assessed property in the municipality. Sections 27.4 and 27.5 of MRAT require that the information be provided within 15 days of the request and, either the information must be in hard-copy format, or the municipality must make reasonable arrangements to let the assessed person see the information at the municipality's office within 15 days of the request.

[13] The fact situation here is quite clear. A request was made by the Complainant on March 30, 2012 for information pursuant to s. 299 and s.300 of the Act. The Respondent did not assert that there were any deficiencies with respect to the form of these requests or allege that the requests were not clear. Relevant to this Complaint, the request was for the rental rate study applicable to the type of space in the subject property. By letter dated April 13, 2012, the Respondent advised that it would not provide the requested information. While the response was made within the requisite 15 days provided in MRAT, it did not provide the requested information. The response was advisory, not informational, in nature. In this Complaint, the municipality neither provided a hard-copy of the information within 15 days nor did it make reasonable arrangements within 15 days of the request for the Complainant to see the information at its offices.

[14] On June 21, subsequent to the start of the filing and exchange of documents relevant to the hearing of the Complaint, the Respondent released another document that is purported to be in response to CARB decisions that had excluded Respondent information relevant to s. 299 and s. 300 requests. However, this document does not provide the rental rate study requested by the Complainant. It does "invite (the Complainant) into our office to see the data used to determine the assessed rents." However, even if that general invitation were construed to satisfy s. 27.4(4) and s. 27.5(4) of MRAT, it still fell outside the 15 day response limit. As well, considering the City is quite clear that it felt it had already satisfied its obligations with respect to ss. 299/300, we can understand the Complainant's reluctance to expend more time on what had proven, until then, to be a fruitless activity.

[15] Section 9(4) of MRAC is likewise quite clear: a composite assessment review board must not hear any evidence from a municipality that was requested but not disclosed under either s. 299 or s. 300 of the Act. The information was requested; it was not disclosed; it was not heard by the Board.

[16] Beyond the specific wording of the legislation, the Board was influenced by the Complainant's arguments on the reasons for these requirements and the duty to be fair and reasonable, open and transparent. The Board was also guided by *Canadian Natural Resources Ltd. v. Wood Buffalo (Regional Municipality),* 2012 ABQB 177, where Madam Justice Sulyma addressed the purpose, intent and specific wording of s. 299 of the Act.

[17] The Board's decision and reasons were delivered orally, in a much abbreviated form, prior to the commencement of presentations on the merits of the Complaint.

[18] Following the delivery of the decision, the Board denied a request by the Respondent to speak to the decision. The Board pointed out that there are legal remedies if the Respondent is not satisfied with the decision.

Request to Consider New Evidence:

[19] After the noon recess the Respondent asked permission to submit new evidence that had only recently come to her attention on the s. 9(4) decision. Specifically, the new evidence was a letter dated July 23, 2012. In effect, the Respondent asked the Board to reconsider its decision. The Board did not accept the new evidence pointing out that it had been available to the Respondent before the start of the hearings; that the decision on the request to exclude evidence under s.9(4) of MRAC had been made on the evidence before the Board during the

hearing on preliminary matters and the decision would stand.

Property Description:

[20] The property under complaint is located in the NE quadrant of the City, within the Horizon district, an area of mixed suburban office and industrial properties. It is located at 2618 Hopewell Place, at the corner of McKnight Blvd. N.E. and Barlow Trail. It is a 5 storey office building, constructed in 2006, containing 74,259 square feet (sq.ft.) of office area plus 52 enclosed parking stalls. Its land use district is Industrial-Business and it is assessed as an A+ Suburban Office using the Income Approach to value at $19/sq.ft.

Issues:

[21] While a number of issues were raised on the Complaint Form, these were reduced to one at the time of the hearing: in applying the Income Approach, does the assessed rental rate of $19/sq.ft. on the office space produce the correct assessment or does the requested rental rate of $17/sq.ft. provide for a more correct market value on the July 1, 2011 valuation date?

[22] The valuation methodology was not contested and none of the other variables used in the Income Approach were contested by the Complainant. The valuation of the parking stalls is not in question.

Complainant's Requested Value:

[23] $15,120,000 based on a rental rate for office space of $17/sq.ft.

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

[24] The substance of the Complainant's argument was that, while the subject property is classed as an A+ building and assessed at $19/sq.ft., it is only achieving $17/sq.ft., similar to other A+ buildings in the north east quadrant of the City.

[25] In support of her request, the Complainant (at C1, p.26) pointed first to two current leases in the subject property, both within the valuation period of July 1, 2010 to July 1, 2011. These are 10 year leases, starting December 1, 2010 for $17/sq.ft. and represent the same tenant located on two separate floors. A third lease, unit 440 (at C2A, p.169) in the subject, supported by an extract from the rent roll, demonstrates a rate of $18.50/sq.ft. on a 10 year lease that commenced on June 1, 2008, prior to the valuation period, with a rate step up not scheduled until 2013. This was the only rent roll provided by the Complainant for the subject property.

[26] The Complainant identified another property at 7661 10 St. NE (at C1, p.30) which was assessed as an A+ building in 2011 but which was downgraded by the City to A2 in 2012 and the assessment reduced to $17/sq.ft. Rents achieved in this building, in new leases or renewals during the valuation period, range from $16/sq.ft. to $20/sq.ft. with a median of $17/sq.ft. The Complainant argued that this property is very similar to the subject, particularly by virtue of the rents being achieved.

[27] The Respondent, however, referencing pages 22 through 27 of R1, demonstrated that

this comparable at 7661 10 St. NE is actually three separate, single storey office buildings, with no underground parking, each containing about 25,000 sq.ft., constructed around the year 2000 and which, as evidenced by the photographs included in those pages, appears to be of lesser quality than the subject. The Respondent agreed that this comparable had indeed been reclassified downward.

[28] At C1, p.31, the Complainant provided information on other buildings for which it has lease information. The Medallion Centre, constructed in 2009 and, from the photographic evidence, similar in appearance to the subject, is located in Vista Heights to the south and west of the subject property but still within the north east quadrant of the City. Within this building there are two leases that start within the valuation period at $17/sq.ft. and two other leases that started one month after the valuation date demonstrating a weighted average rent of $17.91/sq.ft. Another property at 7326 10 Street, the Deerport Centre, is an older structure dating from 1999. The Complainant shows a lease within the valuation period of $18/sq.ft. All of the properties within this group were, like the subject, classified as A+ buildings and assessed at $19/sq.ft.

[29] The Respondent's position was that the assessment rate of $19/sq.ft. is fair and is the assessed rate for all A+ suburban offices in the north east. In any event, she contended that the rate cannot be reduced without adjusting the capitalization rate (cap rate) which is not part of the Complainant's request.

[30] The Respondent, in R1, referred to an undated advertisement for a unit within the subject property, purportedly as of May, 2012, in which the net rent requested was $25/sq.ft. The Complainant pointed out that this is an asking rent rate and there is no evidence that this rate was actually met in a lease. Additionally, the Respondent produced a rent roll for the subject dated April 11, 2012 (R1, p.17) that was provided by the owner as part of an Assessment Request for Information (ARFI). The rent roll showed that, in addition to the two rents at $17 and one at $18.50 provided by the Complainant, an additional lease at $22/sq.ft. started May 1, 2010, two months prior to the valuation period. The Complainant argued that this lease information was used by the Respondent to support the previous year's assessment and is outside the current valuation period.

[31] The Respondent also listed additional rents (R1, p.19) for a property at 7326 10 St. NE which is classed as A+, and assessed at $19/sq.ft. The rents in these leases started in January 1, 2011 and are for $18 and $19 with a weighted mean of $19.41/sq.ft. although that rate includes an additional vacant property at 7315 8 St. NE. that relates to a "potential prime rent" of $20.

[32] The Respondent supported her position on amending only one factor of the income approach calculation by reference to two 2011 CARB decisions on two downtown office buildings: 1331/2011-P and 1342/2011-P. This was countered by the Complainant's position that the decisions referenced different properties with different fact situations and that the Respondent herself had not attended those hearings. The Complainant pointed to 2012 assessments on offices where a reduction in rent by a CARB Board did not result in a change in the cap rate.

[33] It is the Board's finding that advertising, by website or marketing flyers, of rental rates, or "potential rents" are not evidence of rents being achieved; as such, they are not considered evidence by the Board and that material was not given consideration in the decision. Likewise,

argument without support that Deerport Centre operates differently from other suburban offices in the NE is not evidence and was not given weight by the Board.

[34] The Board notes that no actual leases and only one complete rent roll were introduced as evidence. The majority of the rental rate information was in chart form and unsubstantiated by any supporting documentation.

[35] Nevertheless, the evidence raised the question about the legitimacy of the assessed rent rate for the subject building. In the absence of a well-documented rent rate study, the Respondent had little to support $19/sq.ft. While 7661 10 St. is not considered to be a good comparable by the Board, the Medallion Building Centre is a valid comparable. The Deerport Centre is in the assessed area and is accepted by the Board, in the absence of evidence to the contrary, to be a reasonable comparable; certainly the rents in the subject building within, or only shortly beyond, the valuation period support a rate reduction.

[36] The Board decided that the best indicators were the seven comparables to be found in the Complainant's C1 document on page 31 but that they should be supplemented by two additional properties from the subject's rent roll, those being unit 110 at $22 and unit 440 at $18.50, as being in reasonable proximity to the valuation period. Mathematically, that produces a weighted average of $18.10/sq.ft. The Board did not find evidence to support changing the cap rate, nor was that requested by the Complainant. In fact, it would appear from the Respondent's Income Approach Valuations that the 7% cap rate is applied to suburban office space whether the assessed rent is $19 or $18 per sq.ft.

[37] The Board's decision is that the assessed rent rate should be reduced to $18 per sq.ft. Using the other parameters as applied by the Respondent, that results in an assessment, when the uncontested assessment of the parking stalls is included, of $16,057,988 truncated to $16,050,000.

Board's Decision:

The 2012 assessment is reduced to $16,050,000

DATED AT THE CITY OF CALGARY THIS 23 DAY OF August 2012.

Susan Kay Barry

S. Barry
Presiding Officer

APPENDIX "A"

DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant's Rebuttal, part 1
4. C2A	Complainant's Rebuttal, part 2

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.: 1336/2012-P		**Roll No.: 031023500**		
Subject	**Property Type**	**Ppty Sub-type**	**Issue**	**Sub-Issue**
CARB	Jurisd/Procedural	Info Exchange	s.9(4) MRAC	s.299/300 Act
	Office	Suburban Office	Rental Rate	Cap rate