

**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:

***705358 Alberta Limited,
(Represented by Altus Group Limited),***

COMPLAINANT

And

The City Of Calgary,

RESPONDENT

Before:

***M. Chilibeck, PRESIDING OFFICER
J. Lam, MEMBER
K. Farn, 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: 086148004

LOCATION ADDRESS: 4840 Richmond RD SW

HEARING NUMBER: 68520

ASSESSMENT: \$5,410,000.

[1] This complaint was heard on 10th day of October, 2012 in Boardroom 8 on Floor Number 3 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

[2] Appeared on behalf of the Complainant:

- A. Izard, representing the Altus Group

[3] Appeared on behalf of the Respondent:

- C. Fox, Property Assessor, representing the City of Calgary

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

[4] Neither party raised any objections to a member of the Board hearing the subject complaint.

Preliminary Matters:

[5] Two preliminary matters were brought before the Board for a decision in this case, one by the Complainant regarding disclosure according to s.299 and s.300 MGA and one by the Respondent regarding disclosure according to s.295 MGA.

[6] The Complainant asked that the preliminary matter of "sufficient information" pursuant to s.299 MGA (Municipal government Act) decided by this Board be brought forward from the hearing of file 67764 (decision 0276-2012-P) to this hearing, which was agreed to by the Board and the parties. However, the Respondent requested to provide additional evidence and argument at the subject hearing which was agreed to by the Complainant and the Board.

Complainant's s.299 and s.300 matter

[7] Paragraphs five to ten of decision 0276-2012-P (File 67764) are reiterated below as paragraphs eight to thirteen. The Respondent's and Complainant's argument as presented at this hearing is summarized subsequent to paragraph thirteen, followed by the Board's decision on this matter.

[8] "The Complainant objected to the inclusion of lease rate comparables in the Respondent's exhibit because this information was requested of the Respondent and was not provided. Specifically, the Board was asked to remove pages 24, 27, 30, 31 32 and 55 from exhibit R1.

[9] The Complainant argued that a request was made of the Respondent to provide information according to s.299(1) and s.300(1) MGA (Municipal Government Act) and the information was not disclosed according to s.299(1.1) and (2) and s.300(1.1) and (2) MGA. The Complainant argued that therefore the Board must not hear any evidence related to the above pages according to s.9 (4) MRAC (Matters Relating to Assessment Complaints Regulation).

[10] Reference was made by the Complainant to court decision 2012 ABQB 177 (CNRL) and several recent Board decisions rendered in September and October, 2012 on this matter. The court decision said the intent of s.299 is that all relevant information should be supplied to the taxpayer and the Board decisions ruled that when the requested information is not supplied, it will not hear any evidence related to the excluded information.

[11] The Respondent asserted that subsequent to the earlier Board decisions rendered in July, 2011 on the subject matter, information was provided to the Complainant. The Complainant countered that the information did not include lease rate comparables for CRU retail space. The Respondent stated that the Complainant was advised that the CRU retail space lease rates are available for perusal at the office of the Respondent and that there was no response from the Complainant nor did the Complainant attend at the office of the Respondent to peruse the information. The Complainant argued that the CRU lease rates were not made available by the Respondent within 15 days of the request as required by s.27.4 (4) MRAT (Matters Relating to Assessment and Taxation Regulation).

[12] The Board finds that the MGA and its regulations imply that access to assessment information is important for both the assessing authority and the assessed owner. The consequences to either party for not providing information are significant. The Board must not hear any evidence from a municipality relating to information requested by a complainant but not provided to the complainant and conversely the Board must not hear any evidence from a complainant relating to information that was requested by the assessor but was not provided to the assessor.

[13] This has been reinforced by court decision 2012 ABQB 177 (CNRL) and several recent Board decisions rendered in September and October as referred to by the Complainant. The Board reinforces the finding that the Respondent cannot refuse to disclose information when requested by the Complainant or the assessed owner and then disclose the information in its disclosure to the Complainant."

[14] At this hearing the Respondent argued that Calgary CARB decision 0776-2012-P, rendered on July 18, 2012, supports the position that the Respondent is not required to produce the information as requested by the Complainant according to s.299 and s.300 MGA. However, the Respondent had chosen to supply the information on June 21, 2012 wherein it was stated "For rental rate comparables for other Retail spaces including Gas Bars and Restaurant Fast Food and Suburban Office which includes Office warehouse, we invite you into our office to see the data used to determine the assessed rents." The reason for the invite to the Respondent's office was because of the scope and volume of the data which was too numerous to provide in hard-copy form. The Complainant provided to the Board a copy of the June 21st information sent to the Complainant. The Complainant agreed to have the information entered as an exhibit at this hearing.

[15] The Complainant argued that the June 21 evidence and court decision 2012 ABQB 177 (CNRL) was not addressed or part of the hearing and decision 0776-2012-P. The Complainant asserted they had attempted three times prior to June 21st to obtain the requested information from the Respondent and were not successful. It was argued by the Complainant that the recent Board decisions, rendered in September and October, determined that when the requested information is not supplied, the Board will not hear any evidence related to that information.

[16] The Board finds the additional evidence and argument presented by both parties has not persuaded the Board to allow the Respondent's evidence pertaining to CRU lease rates to remain in the Respondent's disclosure of evidence. The Board takes direction from court decision 2012 ABQB 177 (CNRL) that the Respondent "must deliver or provide access to all information relevant to the assessment calculation, not just that requested by the taxpayer." The Board also finds the recent CARB decisions persuasive that appear to follow the direction of the court decision. Again, as said in decision 0276-2012-P by this board, the Respondent cannot

refuse to disclose information when requested by the Complainant or the assessed owner and then disclose the information in its disclosure to the Complainant.

Respondent's s.295 Matter

[17] The Respondent requested the Board not hear any evidence from the Complainant according to s.9 (3) MRAC because the Respondent requested lease information (ARFI – Assessment Request for Information) of the assessed owner according to s.295 MGA but the information was not provided to the assessor. A copy of "Assessment Request for Information History" was provided by the Respondent in support of their claim and shows under "ARFI Status", "received (return to sender)". The Respondent argued that the Respondent sends ARFI's to the owner and property manager annually to the address shown on the assessment notice. The address comes directly from Alberta Land Titles. Also, the property tax notice is sent to the same address as the ARFI request. The Respondent has not received either the 2012 assessment notice or the 2012 property tax notice returned by Canada Post. The Respondent also advised that the 2012 ARFI request has been returned and marked "return to sender". The Complainant argued that the Respondent has not provided sufficient information to support their request. The Respondent should demonstrate by way of copies of the original letter of request and follow up letters.

[18] The Board finds the assessed owner has not provided the information requested in the 2011 assessment year according to s.295 (1) MGA. The Board finds that the matter of lease rate information of the subject property is necessary for the assessor to prepare the subject 2012 assessment. Therefore, according to s.295 (4) MGA, the assessed owner or his agent may not make a complaint about the subject 2012 assessment. Based on the foregoing the Board can not hear the complaint that is prohibited by s.295 (4) of the MGA.

Board's Decision:

[19] The Board's decision is to dismiss the complaint.

DATED AT THE CITY OF CALGARY THIS 15th DAY OF November 2012.


M. Chilibeck
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD**

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. R2	Calgary CARB Decision 0776-2012-P
4. R3	Respondent's June 21 st Letter and Information

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 ADMINISTRATIVE USE ONLY

Decision No. 046-2077-2012-P				Roll No.086148004
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Sub-Detail</u>
CARB	Jurisdiction	S295 Information Request		S295(4) Failed to Provide