

**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:

***404305 Alberta Ltd,
(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: 101045003

LOCATION ADDRESS: 6130 – 1A ST SW

HEARING NUMBER: 67691

ASSESSMENT: \$4,910,000.

[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] 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 68520 (decision 0277-2012-P) to this hearing which is reiterated as follows. This request was agreed to by the Board and the Respondent.

[6] In this case the Complainant requested that the comparable lease rate analysis for CRU space category of 2501 to 6000 sq. ft. on page 27 be excluded from exhibit R1. Pursuant to s.9 (4) MRAC (Matters Relating to Assessment Complaints Regulation) and decision 0277-2012-P, the Board's decision was not to hear any evidence related to the excluded information

Complainant's s.299 and s.300 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."

Property Description:

[17] The subject property is a strip retail shopping centre with a building constructed in 1990 situated on 1.35 acres of land. The subject is classed as a Quality A- property with a total area of 19,148 square feet (sq. ft.). The total area consists of three categories of CRU (Commercial Retail Unit) space; CRU space, 0-1000 sq. ft., of 2,142 sq. ft., CRU space, 1001-2500 sq. ft., of 6,993 sq. ft. and CRU space, 2501-6000 sq. ft., of 10,013 sq. ft.

[18] The subject is located at the north east corner of 61st AV and 1st A ST in Manchester Industrial Community in SW Calgary (approximately three blocks east of Macleod TR). It is predominately surrounded by commercial property. The subject is commonly known as Admiral Court Shopping Centre.

Issues:

[19] The Complainant identified the matters of an assessment amount and assessment classification on the Assessment Review Board Complaint (Complaint Form) and attached a schedule listing several reasons (grounds) for the complaint. At the hearing the Complainant advised that the assessment amount is under complaint and identified the following issue.

1. The assessed rental rate for the CRU space category of 2,501 to 6,000 sq. ft. should be reduced to \$17 per sq. ft.

Complainant's Requested Value:

[20] As per disclosure: \$4,420,000.
[21] Revised during the hearing: \$4,910,000

Board's Findings in Respect of Each Issue:

[22] The subject property is valued by using the capitalized income method wherein the three categories of CRU space are assessed at a rental rate of \$23, \$22 and \$21 per sq. ft. respectively.

[23] The Complainant disputes the assessed rental rate for the CRU space category of 2,501 sq. ft. to 6,000 sq. ft.

[24] The Complainant requested the assessed rental rate be reduced from \$21 to \$17 per sq. ft.

1. Rental Rates**Complainant's Position**

[25] The Complainant supported the requested reduction of the rental rate to \$17 per sq. ft. with a copy of the subject's rent roll and a list of nine lease rate comparables.

[26] The rent roll shows three CRU spaces in the subject category which effectively is two CRU spaces because a tenant leased the adjoining CRU space. One CRU space of 5,352 sq. ft. is leased at \$23 per sq. ft. as of June, 2007 and the other CRU space of 5,837 sq. ft. (3,255 plus 2,582 sq. ft.) is leased at \$17.08 per sq. ft. as of April and January, 2011. The Complainant

argued that the subject CRU space should be assessed at \$17 per sq. ft. based on the lease rate of CRU space of 5,837 sq. ft. No weight should be placed on the \$23 rate because this rate was negotiated at the height of the real estate market in 2007. The Complainant stated that the subject's rent roll is the best evidence in support for the requested rate.

[27] The lease rate comparables are of a building quality rating that ranges from A2 to C, mostly of the B quality, area range from 1,050 to 2,167 sq. ft. and lease rate range from \$10 to \$20 per sq. ft. The average lease rate is \$16.56 per sq. ft. and the median rate is \$17 per sq. ft. The Complainant argued that this supports the requested rate of \$17 per sq. ft. However, in summary the Complainant stated that no weight should be placed on the comparables.

[28] On request by the Board, the Complainant provided a revised requested assessment by changing the area for each CRU category to reflect the areas as stated in the rent roll.

Respondent's Position

[29] The Respondent provided two ARFI's for the subject dated April, 2010 and May 2011 and drew the Board's attention to the lease rates for the CRU spaces of less than 2,500 sq. ft. The Respondent argued that two leases which were renewed in 2010 and 2011 show an increase in the lease rate. This indicates that lease rates are increasing and when the leases are renewed for the space greater than 2,500 sq. ft., the lease rate would likely increase. Also, the Respondent stated that the lease rate of \$17.08 is suspect because of the odd amount.

Board's Reasons

[30] The Board finds the subject's rent roll is the best information regarding rental rates for the subject property. The Board is persuaded by the Complainant's argument that the lease rate of \$23 per sq. ft. that commenced June, 2007 should be discounted because it was negotiated at the height of the market. Also, the Board discounted the lease rate of \$17.08 that commenced April and January, 2011 because it appears suspect. However, on perusal of the rent roll for the other CRU spaces the Board was persuaded that the appropriate rental rate should be \$20 per sq. ft. The Board placed no weight on the lease rate comparables because they are not sufficiently similar to the subject in terms of quality and space size to infer a rate for the subject.

[31] Based on the foregoing and using the Complainant's revised area allocation, the Board determined the revised assessment to be \$4,750,000.

Board's Decision:

[32] The Board's decision is to change the assessment to \$4,750,000.

DATED AT THE CITY OF CALGARY THIS 1st 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

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.*

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Decision No. 046-2079-2012-P				Roll No.101045003
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Sub-Detail</u>
CARB	Retail	Strip Plaza	Income Method	Net market Rate