



**ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

**CARB0203-0003/2011**

**IN THE MATTER OF A COMPLAINT** filed with the City of Lethbridge Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

**BETWEEN:**

Calloway REIT - Complainant

- a n d -

City of Lethbridge - Respondent

**BEFORE:**

**Members:**

Rob Irwin, Presiding Officer

William LeLievre, Member

Wayne Stewart, Member

A hearing was convened on Thursday, July 14, 2011 in the City of Lethbridge in the Province of Alberta to consider complaints about the assessments of the following property tax roll number.

Roll No./ Property Identifier	Assessed Value	Owner
1-0-400-3700-0001 0012985;4;1	\$49,822,000	Calloway REIT

Appeared on behalf of the Complainant:

- Andrew Izard – Altus Group

Appeared on behalf of the Respondent:

- Verle Blazek, Assessor, City of Lethbridge
- William Shores, Solicitor, Shores Jardine Barristers & Solicitors

**PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

The subject property is a commercial retail shopping centre named Coulee Creek Centre (Wal-Mart Power Centre) and is located at 3700 Mayor Magrath Drive South, Lethbridge Alberta.

**PART B: PROCEDURAL or JURISDICTIONAL MATTERS**

The CARB derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

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The CARB considered the complaint form together with all the representations and materials presented by the parties.

The matters or issues raised on the complaint form are as follows:

**Section 4: Complaint Information**

- An Assessment Amount (Box 3)
- In response to the question regarding whether Sections 299 and 300 of the Municipal Government Act were complied with. "No" was selected

**Section 5: Reasons for Complaint**

The requested assessment value is \$41,000,000 and the following statement.

"The taxpayer disagrees with the net operating income used to determine the assessed value. The assessment value of \$49,822,000 does not reflect market value."

- The requested assessment value was revised to \$39,174,800 or alternatively \$44,910,000 in the evidence exchanged and at the hearing.

However, as of the date of this hearing only the following issue remained in dispute.

**ISSUE 1: An Assessment Amount****Sub Issues:**

- (1) Inconsistent assessment approach was used by the municipality.
- (2) Market Value

**Legislation:****MUNICIPAL GOVERNMENT ACT, R.S.A. 2000, Chapter M-26**

**1(1) (n)** "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;  
**285** Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298.

**(2)** Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

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**293(1)** *In preparing an assessment, the assessor must, in a fair and equitable manner,*

- (a) apply the valuation and other standards set out in the regulations, and*
- (b) follow the procedures set out in the regulations.*

**(2)** *If there are no procedures set out in the regulations for preparing assessments, the assessor must take into consideration assessments of similar property in the same municipality in which the property that is being assessed is located.*

**299(1)** *An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.*

**(1.1)** *For the purposes of subsection (1), "sufficient information" in respect of a person's property must include*

- (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,*
- (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and*
- (c) any other information prescribed or otherwise described in the regulations.*

**(2)** *The municipality must, in accordance with the regulations, comply with a request under subsection (1).*

**300(1)** *An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.*

**(1.1)** *For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:*

- (a) a description of the parcel of land and any improvements, to identify the type and use of the property;*
- (b) the size of the parcel of land;*
- (c) the age and size or measurement of any improvements;*
- (d) the key factors, components and variables of the valuation model applied in preparing the assessment of the property;*
- (e) any other information prescribed or otherwise described in the regulations.*

**(2)** *The municipality must, in accordance with the regulations, comply with a request under subsection (1) if it is satisfied that necessary confidentiality will not be breached.*

**467(1)** *An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.*

**(2)** *An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).*

**(3)** *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*

- (a) the valuation and other standards set out in the regulations,*
- (b) the procedures set out in the regulations, and*
- (c) the assessments of similar property or businesses in the same municipality.*

**MATTERS RELATING TO ASSESSMENT COMPLAINTS REGULATION 309/2009**



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**8(1)** *In this section, "complainant" includes an assessed person who is affected by a complaint who wishes to be heard at the hearing.*

**(2)** *If a complaint is to be heard by a composite assessment review board, the following rules apply with respect to the disclosure of evidence:*

**(a)** *the complainant must, at least 42 days before the hearing date,*

*(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and*

*(ii) provide to the respondent and the composite assessment review board an estimate of the Amount of time necessary to present the complainant's evidence;*

**(b)** *the respondent must, at least 14 days before the hearing date,*

*(i) disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and*  
*(ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;*

**(c)** *the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.*

**9(1)** *A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.*

**(2)** *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

**(3)** *A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.*

**(4)** *A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.*

**10(1)** *A composite assessment review board may at any time, with the consent of all parties, abridge the time specified in section 7(d).*

**(2)** *Subject to the timelines specified in section 468 of the Act, a composite assessment review board may at any time by written order expand the time specified in section 8(2)(a), (b) or (c).*

**(3)** *A time specified in section 8(2)(a), (b) or (c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.*

**MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION 220/2004**  
**(with amendments up to and including Alberta Regulation 330/2009)**

**2** *An assessment of property based on market value*

**(a)** *must be prepared using mass appraisal,*



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*(b) must be an estimate of the value of the fee simple estate in the property, and*

*(c) must reflect typical market conditions for properties similar to that property.*

*3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.*

*4(1) The valuation standard for a parcel of land is*

*a) market value,*

*6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation*

*standard for the land and improvements is market value unless subsection (2) or (3) applies.*

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

**SUBISSUE 1: Inconsistent assessment approach was used by the municipality**

**Decision:**

The CARB finds that the Assessment was prepared in accordance with the regulations and according to MGA 467 (1) and (3) does not warrant a reduction in the assessment.

**Reasons:**

The evidence presented did not convince the board that the assessment was not fair and equitable

The Complainant's argument was that market rent was the same as assessment for some properties but not for all. It was the position of the Complainant that this indicated that the assessment was not completed by a mass appraisal approach but rather site specific.

The Respondents argument and evidence illustrated to the Board that the Assessor consistently considered multiple factors in analyzing market data when preparing all assessments in accordance with all Duties of an Assessor MGA Section 293.

**SUBISSUE 2: Market Value**

**Decision:**

The Board finds that the evidence presented does not warrant a reduction in the assessment based on Market Value.

**Reasons:**

The Complainant requested the assessed rate of \$10.00 sq/ft was overstated and be reduced to \$5.46 sq/ft or alternatively \$8.00 sq/ft for the Wal-Mart property. To support these two requests a chart of market leasing comparables was presented that included eight Lethbridge properties.



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Also included was sales information for the subject property in 2004 and the Complainant's comparable, a Wal-Mart property located at 3055 26 Ave North, Lethbridge Alberta.

The Respondents presentation was convincing to the Board indicating that there has a consistent approach to assessing all commercial properties in the City of Lethbridge and that this was regardless of rent or lease rate. Consistency was confirmed by referring to the Complainant's Market Lease Chart, where five of eight properties were assessed between \$10.00 and \$10.36 per sq/ft. The Assessor stated that \$10.00 is the correct rate and the evidence provides confirmation of his professional opinion.

**Subsequent Matter: Application for Costs**

During the Hearing the Solicitor for the Respondent voiced a concern regarding an issue with the completion and the filing of the complaint form. On the form it was indicated by the Complainant that the Municipality had not conformed to 299 and 300 of the MGA. It was stated that as part of the evidence package received by the Municipality on June 2 2011, there was a section titled legal brief and the first person listed as appearing at the hearing was a lawyer. The Solicitor admitted, that based on the above information, the Municipality engaged legal counsel to prepare a response specifically to a complaint regarding Section 299 and 300 of the MGA and had also agreed to compensate him for being present for the hearing.

The Solicitor also stated that the first time the Municipality was made aware that the complaint would not include any challenge to Section 299 and 300 was at the hearing.

The Complainant stated that the evidence exchanged included portions that were a standard procedure and included in all the Agent's appeals. Usually included, would be the pages such as MRAT Regulations, a section on Property Appraisal and Assessment Administration, Legal Submission, a page on Disclosure and another titled Onus of Proof.

The Board was advised that the lawyer listed in the file is an employee of the Agent and was never intended to be presenting evidence regarding violations of MGA 299 and 300. The Complainant explained that the procedure at Altus Group was to include all staff who may be at the hearing when filing the complaint. This was considered as a precaution that there would be client representation in position in case of illness, for example.

**Decision:**

The application for costs is denied.

**Reasons:**

The Complainants evidence package that was received by the Municipality, June 2 2011, did include some sections that were considered standard submissions of generic material and not specific to this complaint.

The Board also considered the Complainant's Summary of evidence on page three.



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That summary did not include that any testimonial evidence would be given regarding a challenge to MGA 299 and 300 or indicate that the Municipality should prepare for that issue.

The Board agreed that the Complainant had not abused the appeal process by their actions and denied the application in accordance with MRAT 52(2)(a)

**PART D: FINAL DISPOSITION OF COMPLAINT**

The complaint is denied and the assessments are confirmed as follows:

Roll No./Property Identifier	Value as set by the CARB	Owner
1-0-400-3700-0001 0012985;4;1	\$49,822,000	Calloway REIT

It is so ordered.

Dated at Carstairs, in the Province of Alberta, this 5<sup>th</sup> day of August 2011

Rob Irwin, Presiding Officer



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**APPENDIX "A"**

**DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB**

**NO. ITEM**

1. Exhibit C1 – Calloway Real Estate Investment Trust Submission
2. Exhibit C2 – Altus Group Submission
3. Exhibit R1 – City of Lethbridge Submission

**APPENDIX 'B'**

**ORAL REPRESENTATIONS**

**PERSON APPEARING CAPACITY**

1. Andrew Izard – Altus Group Inc
2. Verle Blazek, Assessor, City of Lethbridge
3. William Shores, Solicitor, Shores Jardine Barristers & Solicitors
4. Wendy Smith, Assessment Review Board Clerk, City of Lethbridge

**CARB - 0203-0003/2011 (For MGB Office Only)**

Column 1	Column 2	Column 3	Column 4	Column 5