REGIONAL MUNICIPALITY OF WOOD BUFFALO

Composite Assessment Review Board

REGIONAL MUNICIPALITY OF WOOD BUFFALO BOARD ORDER CARB 014-2011

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo 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:

Altus Group- Complainant

- a n d -

Regional Municipality of Wood Buffalo - Respondent

BEFORE:

Members:
J. Noonan, Presiding Officer
E. McRae, Member

Administration:
N. MacDonald, Clerk for the Assessment Review Boards
A. Rogers, Senior Legislative Officer

A hearing was held on August 26, 2011 in Fort McMurray in the Province of Alberta to consider a complaint about the assessment of the following property:

Roll Number	Address	Assessment	CARB File
71047360	19 Riedel Street	$41,651,000	11-082

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property holds a mixture of commercial/retail spaces (CRUs) totaling 103,796 sq.ft. of development arrayed in two strips along the eastern and western edges of the 11.095 acre lot, facing inwards to a parking area. There are 9 CRUs in the 1000-3000 sq.ft. size category, 3 CRUs in the 3001-10,000 range, 3 CRUs in the 10,001-20,000 range occupied by Canada Post, Sport Check, and Mark's Work Wearhouse, and 1 CRU, The Brick, greater than 20,001 sq.ft. In addition to the two strip malls, there is a 38,606 sq.ft. Sobey's store that has 2558 sq.ft. of mezzanine development. Including the Sobey's store, the subject has a building area of 144,960 sq.ft. To the south of the subject is further retail development, including big box stores such as Walmart, Canadian Tire and Staples.

The assessment was prepared by the capitalized income approach. Typical market lease rates and different cap rates were applied to the size categories:

Size	Lease Rate	Cap Rate
1000-300	$36	7.25%
3001-10,000	$34	7.5%
10,001-20,000	$31	8.25%
20,000+ (Brick)	$20	8.25%
Sobey's main	$16	8%
Sobey's mezz.	$1	8%

Allowances of 5% were applied for vacancy and management/structural throughout, except for the main Sobey's area where a 3% vacancy was used. The majority of the strip mall area was constructed in 2004, the balance in 2006, and the grocery store added in 2010.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The third member of the panel scheduled for the August 26 hearings was unable to attend. The parties raised no objection to a two-member panel. Section 458(2) of the Municipal Government Act specifies a quorum of the composite assessment review board as the provincial member and one other member. The requirements of a quorum being met, the hearing proceeded.

PART C: ISSUES

The complaint form enumerated a number of "grounds for appeal", summarized as follows: the assessment was in excess of market value; unfair and inequitable considering comparable properties; vacancy should be 5% for all spaces; there should be an $8 per sq.ft. vacancy shortfall allowance; the cap rate should be no less than 8.25%; all of the rental rates should be reduced; the net operating income applied is too high; the use of multiple cap rates is erroneous for a single-titled property; the current cap rates fail to account for the risk associated with the Fort McMurray retail marketplace; and the assessment factors of rent rates, vacancy and cap rates are inequitable when compared to similar competing properties.

Evidence and argument presented at the hearing addressed three issues:

Issue 1: Should the rental rates for all the CRU categories be lowered?

Issue 2: Should a single cap rate, 8.25%, be used in the capitalized income approach?

Issue 3: Should the vacancy allowance for the main Sobey's area be in line with the rest of the subject at 5%?

If the Complainant's lease rates were affected, as well as the changes to cap rate and 5% vacancy for the grocery store, the assessment would decline to the requested amount of $33,642,500.

Issue 1: Should the rental rates for all the CRU categories be lowered?

Summary of the Complainant's Position:

The Complainant produced a rent roll for the subject as of August 1, 2010 showing the areas leased, their rents, and lease start and expiry dates. Six leases were dated 2007 and another January of 2008. The other 9 leases had start dates in 2004 and 2005, and 6 of these were now paying stepped-up rates. In all cases, the contract rents were lower than the assessed rates. For example, the larger CRUs in the 10-20,000 sq.ft range were paying rents of $16, $25 and $30 but were assessed at $31. The requested rate was $25, the same as the median. Three CRUs in the 3-10,000 range paid $28, $28 and $19 but were assessed at $34. For the mid-range CRUs, $28 was requested. Eight CRUs in the range of 1000-2500 sq.ft. leased in a range of $25 to $38 with a median of $32, weighted average of $31.38, yet the assessed rate was $36. The requested rate was $32.

The Brick was assessed at $20 per sq.ft. lease rate, and the contract rent was $19. The Brick had an area of 24,941 sq.ft. and so was very similar in size to another big box store nearby, Staples, with 25,762 sq.ft. of area. Staples was assessed at a $14 rate, and so should The Brick.

There was no issue with the lease rates applied to the Sobey's main and mezzanine rates.

Summary of the Respondent's Position:

The Respondent noted the Complainant's leasing information was dated. In 2 of the 3 size categories, the most recent lease was from 2007, and the third category, 2008. Rather than using actual rents paid, the Assessor was required to use market typical rents in preparing the assessment. In response to a Board question, the Assessor gave an overview of the CRU inventory from which the typical lease rates were decided. There were some 15 properties with an average of around 10 CRUs. For the less than 3000 sq.ft. CRU category, there was a very good Annual Request for Information (ARFI) return, lots of new construction came onstream, and the assessment department had some 20 newer (2009-2010) leases to conclude an average lease rate of $41 versus the $36 applied to the subject's smaller CRU spaces. For the 3000-10,000 sq.ft. category, there were only about seven leases that showed an average rate of $40, and again, $34 was applied. In the 10,000-20,000 sq.ft. category, only 2 leases were available and so some older leases were also considered but with more weight to the newer.

As regards The Brick, the Assessor noted that the current $19 rent negotiated in 2007 was due to step-up to $21 in May, next year. A $20 lease rate was agreed between the parties last year for assessment purposes, and that same rate has been carried forward for this year. A comparison to the Staples property was improper as these were not similar buildings. The Brick was better quality 2004 construction with better interior and exterior finish. The Staples property was built in 2009 and was essentially a warehouse/industrial shell with exposed I-beams and no interior portioning.

There is a shortage of land in Fort McMurray, and this simple fact drives both lease rates and sales prices. Four commercial property sales from the year prior to valuation date were outlined, showing an average price per sq.ft. of $452. The sale at 339 Powder Drive was a multi-buiding development with a 1 storey strip mall, office buildings with residential above, and 4 free-standing banks. The building area is 141,140 sq.ft., very close to the size of the subject, on a smaller 8.4 acre lot. Built in 2007, the Powder property sold in January 2010 for $62.88 million or $445 per sq.ft. The subject's assessed value, including Sobey's, is $289 per sq.ft.

Findings and Reasons:

1. The Assessor's lease rate information is more reflective of the Fort McMurray market than the subject's more dated leases in place.

2. The Brick and Staples properties are not similar and should command different lease rates.

3. No change to the assessed typical lease rates is warranted.

The CARB is satisfied that the ARFI process has equipped the Respondent with better, current information about lease rates in the municipality than is offered by the contract rents in place at the subject. The most recent lease at the subject was dated January 1, 2008, 2 ½ years prior to the July 1, 2010 valuation date. Other leases dated back as far as 2004.

The construction and finish differences explain the discrepancy between the assessed lease rates at The Brick and Staples, $20 and $14. The Complainant's evidence shows that there can be substantial differences between properties or spaces of similar size. For example, the rent roll shows two 2005 leases signed in January and July for areas of 15,842 sq.ft. and 19,878 sq.ft. The lease rate for the smaller is $16 and the larger is at $30. Both tenants are national in scope, so the rent discrepancy must rest with the condition or physical characteristics of what was being leased.

It is trite to observe that commercial property trades in the market on the basis of ability to produce income. The sales evidence from the Respondent showed a similarly sized property transacting at $445 per sq.ft. The Complainant's requested assessment of $33.6 million represents a per sq.ft. value of $232 or about half what the Powder property commanded. Other hearings before this panel the same day confirmed that banks are more valuable tenants than grocery stores, but to accept the Complainant's lease rates, and lower the implied value of the subject property flies in the face of market reality.

Issue 2: Should a single cap rate, 8.25%, be used in the capitalized income approach?

Summary of Party Positions:

The Complainant argued that the subject is a single-titled property and would sell as such with one cap rate. Unlike a commercial condo, a purchaser would not be able to buy a single bay. A map or plan of the property showed the individual leased spaces, and the cap rates for the individual CRUs were identified: 7¼%, 7½% and 8¼%. The smallest CRUs were assigned the lowest cap rate, the largest CRUs including The Brick and Canada Post the highest. The different cap rates employed by the Assessor assigned a greater risk to the Canada Post lease than to the small CRUs, but it was argued that the risk across the property would be the same, and so should the cap rate.

The Respondent noted there was no evidence supplied by the Complainant to justify an 8.25% cap rate. The overall blended cap rate for the subject was 7.95%. The assessment department was working on implementing a single cap rate for next year for properties like the subject, but defended the split cap rate by observing that a larger CRU or building would be more difficult to rent than a smaller, and thus the higher risk. A third party survey from Colliers International showed a cap rate range of 6%-8% for Alberta retail properties.

Findings and Reasons:

1. There was insufficient evidence advanced to justify a change to the cap rate.

The Complainant's request appears to be based on choosing the highest rate from the range employed by the Assessor for the various sized CRU spaces. This begs the question, why not a rate somewhere between high and low? The Board is satisfied that the overall blended rate of 7.95% is not contradicted by market evidence, and should stand. The use of differing cap rates for different portions of a single-titled property may appear unconventional, but the CARB is more interested in the value conclusion than argument concerning appraisal theory. Elsewhere, the provincial member has heard the opposite argument from a complainant, that indeed one should apply varying cap rates to different parts of a shopping centre.

Issue 3: Should the vacancy allowance for the main Sobey's area be in line with the rest of the subject at 5%?

Summary of Party Positions:

The Complainant's position is the same as for the cap rate issue, that a single vacancy rate should apply to a single-titled property.

The Respondent noted an absence of analysis from the Complainant showing the vacancy and thus the assessment was incorrect. The Respondent presented a chart of 4 newer similarly sized grocery stores, including the subject, which showed the same assessment parameters had been applied to all, including a vacancy allowance of 3%. Equity had been achieved.

Findings and Reasons:

1. There was insufficient evidence advanced to justify a change to the vacancy rate.

In fact, there was no evidence to justify a change to the vacancy rate.

PART D: DECISION

The complaint is denied and the assessment confirmed.

It is so ordered.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 23rd day of September, 2011.

J. Noonan, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

1. Exhibit C1 Evidence Submission of the Complainant, 98 pages
2. Exhibit R2 Commercial Property 2011 Assessment Brief, 49 pages

APPENDIX 'B"

ORAL REPRESENTATIONS

Person Appearing	Capacity
1. Walid Melhem	Tax Consultant, Altus Group, Agent for the Complainant
2. Ryan Sweeney	Assessor, Regional Municipality of Wood Buffalo
3. Matthew Moore	Assessor, Regional Municipality of Wood Buffalo