

**CALGARY
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:

***Atrium VII 340 Midpark Way GP Ltd. (as represented by Altus Group Limited),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***Ivan Weleschuk, PRESIDING OFFICER
Y. Nesry, MEMBER
J. Pratt, 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:	156141905
LOCATION ADDRESS:	340 Midpark Way S.E.
HEARING NUMBER:	68591
ASSESSMENT:	\$22,420,000

- [1] This complaint was heard on the 3rd day of July, 2012 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- D. Chabot

Appeared on behalf of the Respondent:

- R. Fegan

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

- [2] Neither party objected to the panel before them. No jurisdictional matters were raised.

Board's Decision in Respect of Procedural Matters:

- [3] The Complainant raised a procedural issue related to Section 299 and 300 of the Municipal Government Act (MGA). The Complainant's evidentiary package was entered as an exhibit (Exhibit C1) to demonstrate the details of the issue, as this package contained copies of letters and other documents exchanged related to a request for information under Section 299 and 300. Section 299 reads as follows:

"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."

- [4] The Complainant sent a letter to the City dated February 25, 2012 requesting specific information as to how the subject property was assessed, including a list of specific studies and data (page 79-80, Exhibit C1). This request included "the rental rate study for each space type identified on the property record for the subject property." As the subject property is entirely a suburban office located in the southeast quadrant, this request implied a request for the rental rate study used to support a rental rate of \$18/ft² used in the income approach valuation to derive the assessed value shown on the 2012 Property Assessment Notice. The City responded by letter dated April 13, 2012, and with regard to the request for the rental rate study stated in part:

"There is therefore no obligation under Section 299 to produce all the sales in a valuation model, all the leases in a valuation model, capitalization rate studies, vacancy studies, or any of the other studies that you reference in your request letter." (page 84, Exhibit C1)

- [5] The Complainant then acknowledged receipt of a package of material from the City on or about June 21, 2012 that included much of the information requested in the February 25, 2012 letter, however no rental rates study for suburban offices was provided. Concurrently, the complainant received the Respondent's disclosure package which included a list of leasing comparables showing lease rental rates for suburban offices in the southeast quadrant (presented on page 24 of what was marked later in the hearing as Exhibit R1). Because the Section 299/300 request was not complied with specifically related to rental rates for suburban offices in the southeast quadrant, the Complainant asked the Board to exclude all the lease rental rate information in the Respondent's evidence package, in accordance with Section 9(4) of Matters Related to Assessment Complaints Regulation (MRAC), which states:

"9(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."

- [6] The Respondent presented the Board with a copy of a letter dated June 21, 2012 from the City to Altus Group, which was the cover letter to the package of material provided in response to the February 25, 2012 request for information. In addition to the one page letter, the Respondent also provided a copy of the first page of the information package, and asked the Board to consider the response contained in item 4 "rental rate study". The Complainant acknowledged that the letter and the first page of the information package was received as part of the larger information package on or about June 21, 2012 and did not object to the Respondent providing a copy to the Board, which the Board marked as Exhibit R1. That response in item 4 states as follows:

"Assessed rental rates are based upon leasing information collected from property owners and managers annually from our Assessment Request for Information process. Attachment 3 shows our rental rates analysis for Downtown, Beltline, Supermarkets, Retail Banks, and Big Box. For rental rate comparables for other Retail spaces including Gas Bars, and Restaurant Fast Food, and Suburban Offices which includes Office Warehouse, we invite you into our offices to see the data used to determine the assessed rents."

- [7] The Complainant replied that the reference was buried in a larger package, therefore she did not see the specific statements in the June 21, 2012 letter quoted above. Furthermore, it is inconvenient to make such arrangements and attend at the Assessment Department offices. Other rental rate studies and data was provided in the June 21, 2012 package and the specific, requested information should also have been included in the package.
- [8] The Board considered the legislation and regulations, and the letters/documents exchanged in the context of this legislation and regulations. Matters relating to Assessment and Taxation Regulation (MRAT) 27.4 and 27.5 require that a municipality provide information requested under Section 299 or 300 of the Municipal Government Act within 15 days of receiving the request for information. That was not done in this case. The remedy described in Section 27.6 of MRAT is via a compliance review by the Minister. There is no direction in the Act or Regulations that prevents the Board from

proceeding with a hearing if information requested under a Section 299 or 300 information request is not complied with within a 15 day period.

- [9] Section 299(1) states that the municipality is to "let the assessed person see or receive sufficient information". The June 21, 2012 letter and accompanying package meets that requirement. Specifically, page 1 of the attached material, and the portion identified as "rental rate study", makes a clear offer to the assessed person (or in this case, Altus Group as the representative of the assessed person) to "see" the requested information. It is not the fault of the municipality that the assessed person or their representative did not avail themselves of this opportunity. Because the assessed person or their representative did not visit the municipality to see the information, the issue of whether the information provided is "sufficient to show how the assessor prepared the assessment" is moot. The offer to view the information was made prior to the date of this hearing. As of the date of the hearing the Board concludes that the municipality provided an opportunity for the assessed person to obtain the information requested, and therefore the assessed person is not at a disadvantage by allowing the material in the Respondent's package to be heard. The Respondent's package was properly disclosed, in accordance with Division 2 of Matters Relating to Assessment Complaints Regulation.
- [10] The Board will therefore not exclude any of the material in the Respondent's evidence package. The hearing proceeded to hear the merits of the assessment complaint.

Property Description:

- [11] The subject property is a multi-tenant, three storey office building built in 1981 located at 340 Midpark Way SE, in the Midnapore District. The property has a total of 101,961 ft² of office space, and this is the only use component in the building. All the parking is on surface lots around the building. It is zoned Industrial-Business (I-B) District.
- [12] The property is assessed using an income approach. The total 2012 assessment is \$22,420,000 as indicated in the 2012 Property Assessment Notice.

Issues:

- [13] The Complainant agreed with all the factors and rates used by the City in calculating the 2012 assessment using the income approach, except the rental rate of \$18/ft². Therefore, the only issue before this Board is:
1. Is the property correctly assessed using the income approach, and specifically, is the rental rate used in the assessment calculation the correct rate to apply to the subject assessment?

Complainant's Requested Value: \$19,100,000

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

1. Is the property correctly assessed using the income approach, and specifically, is the rental rate used in the assessment calculation the correct rate to apply to the subject assessment?

A. Complainant's Evidence

- [14] The Complainant's position is that the subject property is somewhat unique and therefore the best indication of the rental rate that should be applied in calculating the subject assessment is what the building is current achieving based on current leases.
- [15] The Complainant provided a copy of CARB Decision 2379/2001-P which indicated that in the previous year, the Board (not this panel) agreed that the subject property should not be assessed as an A+ office building. On page 29 of Exhibit C1, the Complainant presented the rental rates that are applied for the various office classes in the 2012 assessment and noted the large difference between Class A (\$17/ft²) and Class B (\$13/ft²) rental rates. The Complainant opined that the subject building should fall between these two classes, but that said, did not intend to argue building class.
- [16] A rent roll, dated July 31, 2011, for the subject building was presented (page 34-35, Exhibit C1). The Complainant stated that this was the best evidence available. The most recent leases are summarized on page 30 of Exhibit C1, and indicate a current rental rate as of July 31, 2011 of \$15.50/ft².
- [17] To support the rental rate derived from the actual recent leases, the Complainant provided some rental rate information on other office buildings in the area, and showed that there was a wide range of rental rates used in the assessment of these buildings. Because of the ages of these buildings (circa early 1980's) the condition varies between buildings, and therefore the rental rates. For this reason, a comparison of rental rates in other buildings in the area is not helpful.
- [18] Questions from the Respondent and the Board explored the rent roll and details on some of the more recent rent agreements, to better understand if these were new leases, step ups on existing leases, or leases that had been negotiated some years prior.
- [19] In summary, the Complainant argued that the leases taken from the rent roll as of July 31, 2011 were the best indication of the rental rate that should be used in the assessment calculation, and the data showed that the current rental rate is \$15.50/ft².

B. Respondent's Evidence

- [20] The Respondent presented seven lease comparables (page 24, Exhibit R2) supporting the \$19/ft² rate. These seven comparables ranged from \$15-\$26/ft² and averaged \$19/ft². The Complainant via questions of the Respondent noted that two of the seven comparables were from the subject building and both were at \$15/ft².
- [21] The Respondent agreed that the best indication of the rental rate is the rents being achieved in the subject building. Copies of two Assessment Request for Information (ARFI) documents were presented, along with the rent rolls for the subject, one dated May 5, 2011 (pages 18-19, Exhibit R2) and one dated April 11, 2012 (pages 21-22, Exhibit R2). The Respondent selected a number of leases from the rent roll that purported to support the \$19/ft² rate used by the City in its assessment.
- [22] Questions from the Complainant and Board explored the rent roll and details of some of the more recent rent agreement to better understand each respective lease. The information presented by the Respondent has some different "lease start" dates than the rent rolls presented by the Complainant, and the reason for these differences was not obvious or explained.
- [23] In summary, the Respondent stated that the current leases taken from the rent roll support the \$19/ft² rental rate used by the City in its 2012 assessment of the subject property.

C. Board's Conclusions

- [24] The Complainant presented the subject rent roll and referred to a number of leases. The Complainant also presented information on rental rates being achieved in other, similar buildings, and previous Board decisions indicating rental rates for similar buildings. Based on all this information, and primarily the subject leases selected from the July 31, 2011 rent roll, the Complainant stated that the indicated rental rate should be \$15.50/ft². The Respondent presented some comparables showing a wide range of lease rates (\$15-26/ft²) and selected leases from the subject rent roll that supported their rental rate of \$19/ft². It appears that both parties were somewhat selective in the leases they used in their analysis. The Board concludes that the rent roll does not support a rental rate of \$19/ft², but is not persuaded that the correct rental rate is \$15.50/ft².
- [25] The Board concurs with the parties that the best evidence is the rent roll information. Rent rolls representing three different dates were presented. The Board prefers the rent roll dated July 31, 2011 (pages 34-35, Exhibit C1) as the date of this information is closest to the July 1, 2011 assessment date for the 2012 assessment year. The Board notes that all three rent rolls presented as evidence are similar, although they appear to contain different levels of detail. The July 31, 2011 rent roll appears to have the most detailed information.

- [26] Both parties argued the merits of various leases and each selected a subset of the leases to support their position. Therefore, the Board reviewed the rent roll in detail to arrive at its own decision. The Board notes that the current weighted average rental rate being achieved by the building as of July 31, 2011 was just over \$17/ft². No evidence was presented relating to the impact of size of the suite being leased or the relative location of the suite (i.e. first floor vs. third floor) on rental rates. The Board also notes that there was some disagreement as to how the various columns of information on the rent rolls should be interpreted.
- [27] The Board finds the following lease information taken from the July 31, 2011 rent roll the most appropriate to use as an indication of the rental rates for the subject building. Two of the leases (Suite 215 and 220) are new leases taken in May 2011. Two of the leases (Suite 300 and 310) are step ups on longer term leases signed in 2005 and 2006 respectively. These latter two leases involve the same tenant who essentially leases the entire third floor. No evidence was presented on whether this was an automatic step up in the lease negotiate at the time the original lease was taken, or if this was a recently negotiated rate triggered by some review clause in the lease agreement. It is the Board's opinion, that all four leases indicate the current lease rates the building is achieving.

Suite	Tenant	Size (ft ²)	Lease Start	Charge Start	Rate (\$/ft ²)
215	Botting & Associates Alberta Ltd.	3,467	May-11	May-11	15.00
220	H & R Block Canada Ltd.	1,150	May-11	May-11	15.00
300	AECON Canada Ltd.	28,669	Jan-05	Jan-11	18.03
310	AECON Canada Ltd.	7,298	Aug-06	Jan-11	18.03

- [28] The Complainant argued that step up leases don't reflect the current rental rates. This was demonstrated by the City not using the step up leases in their leasing comparables presented on page 24, Exhibit R2. The Respondent argued that step ups are indications of the rents being achieved by the subject building and are therefore valid. The Board notes that little information was provided regarding these two leases and whether they were automatic rates or negotiated as part of the original leases or if they were negotiated more recently. Furthermore, while these two leases may not reflect "current market" lease rates, they do demonstrate the current rental rates being achieved by the building. If this is the basis for the rental rate to be used in the assessment calculation, which both parties agreed was the appropriate approach, then these two leases are valid and should be considered.
- [29] Based on the table presented above and the calculated weighted average rents being achieved by the subject as of July 31, 2011, the Board concludes that the appropriate rental rate to use in the assessment calculation is \$17/ft².

[30] Using a rental rate of \$17/ft², the resulting assessed value is:

$$\begin{array}{rcl} \text{Rental rate} \times \text{vacancy rate} & = & \text{vacancy allowance} \\ \$17/\text{ft}^2 \times 8\% & = & \$1.36/\text{ft}^2 \end{array}$$

$$\begin{array}{rcl} \text{Rental rate} - \text{vacancy allowance} & = & \text{effective gross income} \\ \$17.00/\text{ft}^2 - \$1.36/\text{ft}^2 & = & \$15.64/\text{ft}^2 \end{array}$$

$$\begin{array}{rcl} \text{Less: operating shortfall } (\$12.50/\text{ft}^2 \times 8\%) & = & (\$ 1.00/\text{ft}^2) \\ \text{Non-recoverable costs } (\$15.64/\text{ft}^2 \times 1\%) & = & (\$ 0.16/\text{ft}^2) \end{array}$$

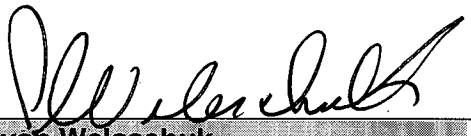
$$\text{Net operating income} \quad \$14.48/\text{ft}^2$$

$$\begin{array}{rcl} \text{Assessment} & = & (\text{net operating income} \times \text{size}) \div \text{capitalization rate} \\ & = & (\$14.48/\text{ft}^2 \times 101,961 \text{ ft}^2) \div 7\% = \$21,091,360; \\ & & \text{truncated to } \$21,000,000 \end{array}$$

Board's Decision:

[31] For the reasons discussed above, the Board concludes that the 2012 Assessment be reduced to \$21,000,000.

DATED AT THE CITY OF CALGARY THIS 18th DAY OF July 2012.


Ivan Weleschuk
Presiding Officer

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

NO.	ITEM
C1	Complainant Disclosure
R1	Respondent June 21 2012 letter and page 1 of attached information package
R2	Respondent Disclosure
C2	Complainant Rebuttal

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.*