

**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:

***Roloh Investments Ltd.*
(as represented by Altus Group Limited), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
J. Rankin, MEMBER
A. Wong, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	032026601
LOCATION ADDRESS:	1935 McKnight Blvd. NE
HEARING NUMBER:	61151
ASSESSMENT:	\$16,210,000

The complaint was heard on July 22, 2011, in Boardroom 12 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- D. Hamilton

Appeared on behalf of the Respondent:

- R. Powell; P. Frank (Counsel)

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

In response to a request by Counsel for the Respondent, the Complainant's witness, D. Hamilton, and the Respondent's witness, R. Powell, were sworn in by the Board.

The Board heard argument with respect to qualification of witnesses from both parties.

The Board accepts S. Powell (witness for the Respondent), is not an expert witness, however, is qualified to give opinion evidence with respect to the assessment of hotel properties by virtue of his delegated authority pursuant to section 284(1)(d) of the Act. There was no objection to this qualification by the Complainant.

From a previous hearing where all parties were present, the Board accepts D. Hamilton (witness for the Complainant), is not an expert witness, however, is qualified to give opinion evidence with respect to the assessment of hotel properties as a result of extensive experience in reviewing hotel assessments. There was no objection to this qualification by the Respondent.

The parties asked that the Board consider arguments made in a previous hearing (File #63389), in the context of the evidence in this matter. The Board agrees to do so.

Property Description:

The subject property is a multi storey 201 room full service hotel, constructed in 1978 and known as the Best Western Port O' Call. Amenities include a restaurant, a beverage lounge a meeting room, aquatic facilities and surface parking.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment
4. an assessment class

At the commencement of the hearing the Complainant withdrew matter 4. The Complainant set out 11 grounds for the complaint in section 5 of the complaint form with a requested assessment of \$13,830,000, however at the hearing the Complainant's evidence and argument related to only the following issue as outlined on pages 7 to 9 of exhibit C1:

More weight should be placed on financial performance as of the base date of valuation and anticipated future earnings to reflect declining revenue. The financial data of the subject property up to June 30, 2010, should be given consideration in the income analysis for assessment purposes, with weightings for stabilizing income of 2008:10%, 2009:30%, 2010:60%.

Complainant's Requested Value:

The Complainant's evidence set out the requested assessment at \$14,894,000 [C1, p.7].

Parties' Positions

The Complainant argued that the assessor failed to consider the most recent financial data up to the legislated valuation date of July 01, 2010 in the income analysis for application in the income approach to value, and as a result, failed to reflect a recent decrease in net operating income in the assessment of the subject property. In support of this argument, the Complainant provided a summary of the subject's revenues and expenses for the 12 month periods ending June 30, 2008, June 30, 2009, and June 30, 2010, which exhibited net operating income (before non-realty deductions) as follows: [C1, pp.27-32, 34]

12 months to June 30, 2008:	\$3,846,299
12 months to June 30, 2009:	\$3,366,201
12 months to June 30, 2010:	\$2,877,769

These levels of income were compared to the net income (before non-realty deductions) set out in the assessor's Valuation Proforma Analysis, as follows: [C1, p.14]

12 months to December 31, 2007:	\$3,863,069
12 months to December 31, 2008:	\$3,294,804
12 months to December 31, 2009:	\$3,201,525

The Complainant further argued that the assessor's "calendar year" methodology excluded relevant income from the first six months of 2010, but included the significantly higher income of the first six months of 2007; some 36 to 42 months prior to the valuation date and much less relevant in a current income valuation.

The Complainant accepted the assessor's selected weighting of the income periods of 10% (2007); 30% (2008); 60% (2009) as appropriate, and applied those weightings to the 12 month periods ending June 30, to arrive at the requested assessment [C1, p.34].

The Complainant also submitted the Calgary Assessment Review Board decision, CARB 1376/2010-P in respect of a neighbouring property's 2010 assessment complaint, and argued that the Board in that instance had ruled in the Complainant's favour on precisely the same issue as the current matter before the Board [C1, pp.21-26].

The Respondent argued that the Calgary Assessment Review Board decisions referenced by the Complainant were rendered in the fall of 2010, and there was insufficient time to collect and analyze data to the valuation date of July 01, 2010 for the 2011 taxation year. As a result, the Respondent submitted that the assessor attempted to follow the spirit of the Board's decisions, and reflect the change in the market by changing the weightings applied to the 3 calendar years of income from 20% (2007); 30% (2008); 50% (2009), to 10% (2007); 30% (2008); 60% (2009), therefore applying more weight to the most recent income level, and significantly less weight to the most dated income level.

The Respondent further argued that the Complainant was not adhering to the mass appraisal requirement, in that different capitalization rates were being sought for similar properties under complaint, and the Complainant's income calculations varied from complaint to complaint resulting in inequitable assessment value requests. In support, the Respondent submitted Assessment Review Board decision CARB 0985/2011-P, wherein the Board indicates that it is bound to the same valuation standards as the assessor in the consideration of a complaint that is fair and equitable with other similar properties.

In support of not relying on 2010 data in the preparation of an assessment, the Respondent also submitted Assessment Review Board decision CARB 0778/2011-P, wherein the Board considered the use of 2010 data as being inequitable.

Board Decision

The Board finds that the Respondent's revised weighting approach was insufficient in recognizing the full extent of the change in financial performance to the valuation date.

The Board further finds that the financial data of the subject property up to June 30, 2010, should be given consideration in an income analysis for assessment purposes.

Matters Relating to Assessment and Taxation, AR 220/2004, sets out the legislated valuation date of July 01, 2010, for taxation in 2011.

s.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.

s.1. In this Regulation,

(f) "assessment year" means the year prior to the taxation year

The Board accepts the Complainant's argument that an estimate of value on July 01, 2010 must consider recent data up to (and including) the valuation date, as this data would obviously be relevant to the parties in a real estate transaction of the property on the valuation date. Further, the Board notes that the assessor typically relies on market data (rents, vacancy rates, capitalization rates) that are reflective of the legislated valuation date for other types of revenue producing properties; it would appear to be inequitable to ignore market data as of the valuation date for only this class of property.

The Board accepts that the Respondent attempted to recognize the change in the market by altering the weighting applied to the historical data from 20% (2007); 30% (2008); 50% (2009), to 10% (2007); 30% (2008); 60% (2009), however the actual financial data in the Complainant's evidence demonstrates that this approach was insufficient in capturing the full extent of the change in financial performance of the subject property at the legislated valuation date. As there was no evidence or argument to the contrary, the Board considered the actual financial data of the subject as being representative of the typical full service hotel market in the municipality.

The Board however does not accept that the Respondent's altered weightings should be applied to the Complainant's recent financial data. The Respondent's testimonial evidence was that weightings were altered to reflect the difference between the 2010 Assessment Review Board's (June 30) methodology and the assessor's calendar year methodology; to apply the altered weightings to the Complainant's recent income statements would be to reflect the reduced income levels twice in the assessment calculation. In this regard, this Board concurs with the decision of the Board in CARB 1376/2010-P included in the Complainant's submission, and allows the Complainant's financial data, weighted as follows: 20%: (12 months to June 30, 2008); 30%: (12 months to June 30, 2009); 50%: (12 months to June 30, 2010).

The Board is not persuaded that the Complainant is required to submit requested assessment values that meet the legislated requirements of mass appraisal; the legislated requirement to prepare a correct and equitable assessment is the obligation of the assessor, and the Board must give consideration to that requirement when adjudicating a properly filed assessment complaint. Mass appraisal is a tool to arrive at valuations that meet the market value standard and not a defence of equity when that standard is not reasonably met. The Board is bound to the legislated standards of assessment; however, it is not bound to the chosen procedures and methodologies of the assessor if they are found to yield an unreasonable estimate of market value, regardless of the fact that assessments of other properties may have been prepared in a similar manner. The Board can only address the assessments that are properly before it.

The Respondent also submitted Assessment Review Board decision CARB 0778/2011-P wherein the Board found that the assessment under complaint was supported by 2008 data that had not been provided to the Assessor at the time the assessment was prepared. The Board notes in that instance the subject's income was originally stabilized at 2007:10% and 2009:90%, which is dissimilar to the weightings applied in this matter, and although the Board considered the use of 2010 data as being inequitable, they did not expand on the reasoning.

The assessment is revised from \$16,210,000 to **\$15,535,000.**

DATED AT THE CITY OF CALGARY THIS

8

DAY OF SEPTEMBER, 2011.


J. Krysa,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission
2. R1	Respondent's Submission
3. C2	Complainant's Rebuttal Submission
4.	CARB 0778/2011-P
5.	CARB 0985/2011-P

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.*