

**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:

Copez Properties Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER

D. Morice, MEMBER

R. Deschaine, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board [CARB] 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:	067232504
LOCATION ADDRESS:	999 8 Street SW
LEGAL DESCRIPTION:	Plan 1423LK, Block 38
HEARING NUMBER:	67901
ASSESSMENT:	\$ 18,980,000

- [1] This complaint was heard on the 10th day of July, 2012 at the office of the Assessment Review Board [ARB] located at Floor Number 4, 1212 31 Avenue NE, Calgary, Alberta, Boardroom 1.
- [2] Appeared on behalf of the Complainant:
- D. Genereux Agent, Altus Group Limited
- [3] Appeared on behalf of the Respondent:
- L. Wong Assessor, City of Calgary

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

Preliminary Issue 1 - Redact evidence of the Respondent:

- [4] The Complainant requested the Board to remove evidence disclosed by the Respondent in that it was not supplied as required by section 299(1.1)(a) of the Act. The Complainant referred also to section 9(4) of the Matters Related to Assessment Complaints [MRAC] regulation to illustrate the remedy for the Respondent's failure under section 299 of the Act. The Complainant referred to section 27.4(2) of Matters Relating to Assessment and Taxation [MRAT] regulation showing the required 15 days for the Respondent to respond to their 299 request. The Board heard from the Complainant that pages 23 through 26 were not disclosed as required under section 299 and must not be heard by the Board as per section 9 of MRAC. The Complainant referred the Board to a recent court decision in support of the application; *Canadian Natural Resources Ltd. v. Wood Buffalo (Regional Municipality)*, 2012 ABQB 177. [CNRL]
- [5] The Respondent indicated that the information required under section 299 of the Act has been provided and, even if t he Board found otherwise, the remedy for failure to disclose is a complaint to the Minister not this Board. The Respondent continued by stating that the information being requested to be redacted was supplied by the Complainant therefore no harm was done by their omission to produce.
- [6] **The Board redacted pages 23 through 26 of the Respondent's disclosure as it was not disclosed as required under section 299 of the Act. Though there is an administrative review available through the Minister, the Board has the responsibility to not hear evidence previously withheld as per MRAC section 9.**
- [7] No additional objections in respect of procedural or jurisdictional matters were raised.

SECTION B: Issues of Merit

Background:

- [8] Downtown Calgary and the Beltline district to the south is bisected by a nationwide rail system that creates a century long natural south boundary to the downtown district. Though close in proximity, the Beltline is a distinct market with numerous access issues with downtown.

Property Description:

- [9] Constructed in 1978, the subject – 999 8 Street SW, is a seven storey office building located on the northern boundary of the Beltline. It is adjacent to both the rail line to the north and a grade separated roadway to the east (8 Street). These influences affect the access and egress of the subject including no access from its address on 8 Street.
- [10] The Respondent prepared the assessment showing 107,894 square feet of office space graded as a 'B' quality, 2,581 square feet of office retail space, 1,249 square feet of restaurant space, and 187 surface parking stalls. The site has an area of 80,776 square feet.
- [11] A separate assessment is associated with this property representing 14,990 square feet of the 107,894 square feet of office space. That space is exempt from taxation therefore only 92,904 square feet of office space is under complaint. The value related to the exempted space is \$2,008,500.

Matters and Issues:

- [12] The Complainant identified two matters on the complaint form:

- #3. *an assessment amount*
- #4. *an assessment class*

- [13] Following the hearing, the Board met and discerned that these are the only relevant questions that need to be answered within this decision:

1. *Is the parking area assessed correctly and is it fair and equitable?*
2. *Is subject in its entirety assessed in an equitable manner having regard to its influences?*

Complainant's Requested Value:

- \$15,200,000 on complaint form
- \$15,700,000 in disclosure document
- \$15,200,000 at hearing confirmed as the request

Board's Decision in Respect of Each Matter or Issue:***Matter #3 - an assessment amount******Question 1 Is the parking area assessed correctly and is it fair and equitable?***

- [14] The Complainant reviewed the complaint before the Board and testified that the location suffers from the nuisance of bordering a high traffic rail right-of-way and experiences considerable location obsolescence due to the proximity of the railway and the resultant below grade roadway that results in poor access and egress.
- [15] The Complainant argued that the assessment is not equitable because neighbouring properties enjoy a 15% reduction in their assessment due to the adjacent railway. The Complainant also states the risk associated with the tracks meant the capitalization rate needed to be adjusted in compensation.
- [16] The Complainant reviewed the Property Assessment Summary Report making special note that the assessed parking is surface parking yet it is assessed at the same rate as heated, underground, and enclosed parking within comparable buildings.
- [17] The Complainant requested a reduction of \$920,000 for the assessed parking based on the assessment amount for comparable underground parking spaces within business condominium projects. These underground parking spaces are being assessed at the requested amount resulting in an inequitable treatment of the Complainant.
- [18] The Complainant provided dozens of office condominium comparables at the same assessment as the request.
- [19] The Respondent noted on the Property Assessment Detail Report that "Abutting A Train Track" was considered when creating the assessment. A comparable just east across 8th Street with the same location and access issues is provided to show that no adjustment is provided and therefore equitable.
- [20] The Respondent provided several comparable parking assessments with the same rate as the subject. Through questioning, the Respondent admitted that all the comparables were, in part if not all, heated, underground, and enclosed parking spaces.
- [21] The Complainant created a *prima facie* case, casting doubt on what is the correct assessment for the parking area. Though the Complainant's evidence is not conclusive as to the correct value, the testimony from the Complainant convinced the Board that there is something wrong with the assessment shifting the *onus of proof* to the Respondent. The Respondent provided little evidence and failed to convince the Board that the assessed value is correct. Given two possible choices the Board finds the value presented by the Complainant better represents market value.
- [22] **The Board finds the rental rate for the parking portion incorrect at \$2400 per stall and changes the rate to \$2004 per stall as requested.**

Question 2 Is subject in its entirety assessed in an equitable manner having regard to its influences?

- [23] The Complainant argued a further reduction of the assessment is warranted because of the risk associated with a building adjacent to the railway tracks. Accordingly, the Complainant suggested the cap. rate needed to increase to 8.91% from the assessed 7.75%. The result is a further reduction of \$2,360,000.
- [24] Two adjacent comparables were provided; each showed a 15% adjustment provided by the Respondent when "Abutting A Train Track".
- [25] In support of the argument, the Complainant led the Board through several sources in an effort to demonstrate an economic obsolescence due to their proximity to the railway tracks.
- [26] To demonstrate the equitable treatment, the Respondent provided a sale with identical circumstance that sold for far more per square foot than the assessment. This proved that the railway and access issues are not creating a negative influence. Upon questioning, the Respondent realized that the sale comparable was not adjacent the railway nor did it have any access and egress issues along 8th Street.
- [27] The Complainant, in this case did not create a *prima facie* case. The evidence did not convince the Board that there is a problem with the assessment.
- [28] **The Board finds all other factors used to derive the assessment as correct and makes no further change to the assessment.**

Potential Net Income

#	Sub Component	Area (Square Feet)	Quantity	Rental Rate	Total Market Rent
1	Office Building Parking Stalls		187	\$2004.00	\$374,748
2	Office Retail Space	2,,581		\$21.00	\$54,201
3	Office Space South West	92,904		\$13.00	\$1,207,752
4	Restaurant	1,249		\$25.00	\$31,225
	Total	96,734		Potential Net Income	\$1,667,926

Values Influencing Income

#	Sub Component	Vacancy Rate	Operating Costs	Non Recoverable	Capitalization Rate
1	Office Building Parking Stalls	2.0%	\$0.00	1.0%	7.75%
2	Office Retail Space	10.0%	\$12.00	1.0%	7.75%
3	Office Space South West	10.0%	\$12.00	1.0%	7.75%
4	Restaurant	10.0%	\$12.00	1.0%	7.75%

Effective Net Income

#	Potential Net Income		\$1,667,926
1	Less Vacancy (Parking Stalls)	2.0%	(\$7,495)
2	Less Vacancy (Office Retail)	10.0%	(\$5,420)
3	Less Vacancy (Office Space)	10.0%	(\$120,775)
4	Less Vacancy (Restaurant)	10.0%	(\$3,123)
	Total Effective Net Rent		\$1,531,113

Net Operating Income

Vacant Space Shortfall	(\$116,081)
Non Recoverable	(\$15,311)
Net Operating Income	\$1,399,721

Market ValueNet Operating Income
Capitalization Rate

\$1,399,721

7.75%

Truncated Assessed Value \$18,060,000**Matter #4 - an assessment class**

- [29] The assessment classes are prescribed through the Act; "297(1) When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property: (a) class 1 residential; (b) class 2 non residential; (c) class 3 farm land; (d) class 4 machinery and equipment."
- [30] The Board did not hear any evidence requesting a change in an assessment class from its current non-residential designation.

Board's Decision:

- [31] After considering all the evidence and argument before the Board it is determined that the subject's assessment is changed to a truncated value of \$18,060,000 net of exempt office space, which reflects market value and is fair and equitable.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF August 2012.
J. Dawson
Presiding Officer

APPENDIX "B"**LEGISLATION****The Municipal Government Act (the Act)**

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

Assigning assessment classes to property

- 297(1)** *When preparing an assessment of property, the assessor must assign one or more of the following assessment classes to the property:*
- (a) *class 1 residential;*
 - (b) *class 2 non residential;*
 - (c) *class 3 farm land;*
 - (d) *class 4 - machinery and equipment.*

Access to assessment record

- 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).*

RSA 2000 cM-26 s299;2009 c29 s5

Decisions of assessment review board

- 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 (MRAC)

Alberta Regulation 310/2009

Failure to disclose

- 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.

Matters Relating to Assessment and Taxation (MRAT)

Alberta Regulation 220/2004 with amendments up to and including Alberta Regulation 330/2009

Mass appraisal

- 2 An assessment of property based on market value
- (a) must be prepared using mass appraisal,
 - (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.

Access to assessment record

- 27.4(1) For the purposes of section 299 of the Act, a municipality must, subject to subsection (4), provide the assessed person with the information described in section 299(1.1) of the Act in one of the following manners:
- (a) in hard-copy form with the assessment notice for the property;
 - (b) in hard-copy form without the assessment notice for the property;
 - (c) through an internet website that is readily accessible to the assessed person.
- (2) A municipality must provide the assessed person with the information described in section 299(1.1) of the Act within 15 days of receiving a request for the information.
- (3) A municipality that provides the information in a manner set out in subsection (1)(a) or (c) is deemed to have met the requirements of subsection (2).
- (4) A municipality that does not provide the information described in section 299(1.1) of the Act in a manner set out in subsection (1) must make reasonable arrangements to let the assessed person see the information at the municipality's office within 15 days of the request.

AR 330/2009 s5

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	High Rise	Income Approach	Equity Comparables