

**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:

Yiu Cheung Lee and Yiu Leung Lee (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, T.B. Hudson
Board Member, Y. Nesry
Board Member, J. Lam***

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: 049005705

LOCATION ADDRESS: 2767 32 AV NE

FILE NUMBER: 66869

ASSESSMENT: \$4,820,000

This complaint was heard on the 25th day of July, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *B. Neeson*
- *K. Fong*

Appeared on behalf of the Respondent:

- H. Yau
- R. Ford

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

By agreement with the Parties, the evidence, argument and decision of the Board with respect to the preliminary matter for complaint File # 66819; will also apply to complaint files 66357, 66346, 66384, 67846, 66431, 67699, and 66869.

Preliminary Matter: The Complainant requested the Board to exclude the Respondent's market lease information for Restaurant Dining Lounge, and Restaurant Fast Food space from their evidence submission (i.e. page 20 of Exhibit R1); in compliance with the Matters Relating to Assessment Complaints Regulation (MRAC) Section 9(4).

BACKGROUND:

[1] The Complainant requested that the market lease information included in the Respondent's disclosure document (i.e. page 20 of Exhibit R1), be removed from the hearing process; because the Respondent refused to disclose the information when requested to provide same under sections 299 and 300 of the Act.

[2] The Complainant argued that the Respondent's market lease information must be excluded from the evidence to be heard by the Board in compliance with MRAC Section 9(4).

[3] The MRAC Section 9(4) regulation states as follows; "A composite assessment review board must not hear any evidence from a municipality that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant".

(4) The Complainant requested the market lease information for Restaurant Dining Lounge, and Restaurant Fast Food space under the Act Sections 299 and 300 from the City of Calgary Assessment Business Unit (ABU), in a letter received March 30, 2012. The letter asked for information with respect to the market leases used to establish the 2012 typical assessed rental rate for restaurant dining lounge and restaurant fast food spaces, including the subject property.

[5] On April 13, 2012 the ABU responded that, "There is no obligation under Section 299 to provide all the sales in a valuation model, **all the leases in a valuation model**, capitalization rate studies, vacancy rate studies or any of the other studies that you reference in your letter. In fact the provision of much of the information you are requesting would breach the confidentiality of various sources of information, and is therefore prohibited by law."**[emphasis added]** (pages 22-26 of Exhibit C1).

(6) The Complainant subsequently filed a non-compliance complaint to the Minister of Municipal Affairs under Section 27.6 of the Matters Relating to Assessment and Taxation Regulation (MRAT).

(7) The Respondent argued that because the alleged non-compliance complaint is before the Minister of Municipal Affairs for resolution, the Board has no jurisdiction to consider the matter under section 9(4) of MRAC.

(a) Issue: Does the Board have the Jurisdiction to Decide the Preliminary Matter?

The Board finds that it has the jurisdiction to decide the preliminary matter in accord with MRAC Section 9(4).

[8] The Board agreed with the Respondent that the Board has no jurisdiction to determine whether the ABU complied with the request for information under the Act Section 299(1); because there was no complaint before the Board at that time. The Complainant's remedy for that alleged non-compliance is provided in Section 27.6 of MRAT.

[9] However, the Board accepts that the Respondent's market lease information could have been an important consideration for the Complainant in evaluating whether the 2012 assessment of the subject property reflected market value, and also in considering the need to file a complaint under the Act Section 460(5) (c).

[10] In the absence of the requested information, a complaint on the assessment of the subject property was filed, and therefore the preliminary matter with respect to MRAC Section 9(4) was properly before the Board.

[11] Section 9(4) of MRAC deals with the failure to disclose evidence to be considered in complaint hearings before the Board as noted previously. In order to apply this regulation, the Board must consider what information was requested and not provided under Section 299.

(b) Issue: Was the ABU Required to Disclose their market lease information in Response to the 299 Request?

The Board finds that the ABU was required to provide their market lease information in their 299 response; because they intended to use the information in defence of the complaint regarding the assessment amount of the subject property.

[12] The disclosure provisions of MRAC have been adjudicated in a recent decision of the Court of Queen's Bench of Alberta Citation: Canadian Natural Resources Ltd. v. Wood Buffalo (Regional Municipality), 2012 ABQB 177. On a Leave to Appeal Application, the Honourable Madame Justice D.A. Sulyma considered the question of the municipality's compliance with the Act Sections 299 and 300.

[13] The decision held the municipality to a high standard of disclosure; stating in part; "the municipality **must**, in accordance with the regulations, comply with a request under the Act Section 299 (1). The intent of Section 299 is clear: it is designed to facilitate disclosure of all relevant information to the taxpayer so as to avoid "trial by ambush" before the CARB. The

disclosure provisions are extremely broad. They effectively require a full report. The municipality must deliver or provide access to **all** information relevant to the assessment calculation, not just that requested by the taxpayer. If it were as the CARB says, the taxpayer would forever be caught in a vicious circle, where it would not have access to the information it never knew existed, because it did not request that information in the first place. Not only would this situation be absurd, it would also effectively negate the taxpayer's fundamental right to know the case against them. The words and intent of Section 299 cannot reasonably support such construction". [**emphasis** in the original].

[14] In the case before this Board, the Complainant requested the market lease information from the ABU in a manner required by the municipality.

[15] The ABU refused to provide the information based on concerns over "breach of confidential sources of information". However, the Act Section 301.1 provides that Sections 299 to 301 prevail "despite the Freedom of Information and Privacy Act".

[16] The Respondent included the market lease information in their disclosure to the Board for this complaint hearing, after refusing to provide the same information to the Complainant, in response to their 299 request.

Decision on the Preliminary Matter

The Board accepted the Complainant's request to exclude the Respondent's market lease information for Restaurant Dining Lounge and Restaurant Fast Food space from their evidence submission, in compliance with MRAC Section 9(4). Consequently, page 20 of Exhibit R1 was not heard by the Board.

Property Description:

[17] The subject property is a 2.53 acre parcel of land improved with three pad site restaurants, Including a 6,000 square foot (sf.) Boston Pizza; a 3,779 sf. Arby's; and a 2,025 sf. Christy's Chicken. The property is located at the corner of 27th ST and 32nd AV, in the Sunridge community of NE Calgary. The current assessment is \$4,820,000 based on the capitalized income approach to value.

Issue(s):

Should the Assessment Amount be Reduced by Adjusting the Assessed Rental Rate of \$33 Per Square Foot(psf.) to \$29psf. for Boston Pizza, and to \$31psf. for Both Arby's and Christy's Chi

Complainant's Requested Value: \$4,370,000 based on market value, or \$3,780,000 based on assessment equity.

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

The Board finds insufficient evidence to support the requested changes in the assessed rental rates for the subject property.

[18] In support of the reduced rental rates requested, the Complainant submitted a chart of market lease rates for full service, and fast food, pad site restaurants in NE Calgary, (page 38 of Exhibit C1). Seven fast food leases exhibited a median lease rate of \$31psf. Seven full service leases exhibited a median lease rate of \$29 psf.

[19] The Respondent countered that both charts included one lease rate that is substantially lower than the remainder which tends to reduce the median substantially. In the case of the fast food leases the rate of \$14.40psf. for a Tim Horton's is an outlier. For the full service leases a Pizza Hut lease at \$15.91psf., is also an outlier.

[20] The Complainant also submitted several NE assessment equity comparable properties in support of an alternative rental rate reduction request to \$26psf. for all three restaurants. (pages 39-89 of Exhibit C1).

[21] The Respondent noted that only one of the fast food equity comparables submitted by the Complainant was an A quality rated property assessed the same as the subject, (page 15 of Exhibit R1); and that the A quality rated full service equity comparables submitted (page 16 of Exhibit R1), also support the assessment.

Board's Decision: The assessment is confirmed at \$4,820,000

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF August 2012.



T. B. Hudson
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

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.*

For MGB Administrative Use Only

<i>Decision No. 1101/1095-P</i>			<i>Roll No 049005705</i>	
<u>Subject</u>	<u>Type</u>	<u>Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Restaurants	Full Service/Fast Food	Market Value/Equity	Disclosure/Rent Rates