

**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:

***Melcor Developments 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:	175036920
LOCATION ADDRESS:	400 Crowfoot Crescent NW
LEGAL DESCRIPTION:	Plan 8910748, Block 3, Lot 10
HEARING NUMBER:	67956
ASSESSMENT:	\$ 22,810,000

- [1] This complaint was heard on the 13th 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:
- M. Lau 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 view their Rebuttal Disclosure (C1) as it contained their argument for the preliminary request. The Complainant is asking for the removal of eight pages disclosed by the Respondent in that it was not supplied as required by section 299(1.1)(a) of the Act.
- [5] The Complainant further asked for the removal of an additional four pages disclosed by the Respondent in that it was not supplied as required by section 300(1) of the Act.
- [6] The Complainant reviewed section 299 and 300 of the Act and the resulting remedies in sections 9(4) of the Matters Related to Assessment Complaints [MRAC] regulation and sections 27.1 through 27.5 of Matters Relating to Assessment and Taxation [MRAT] regulation emphasizing the required 15 days for the Respondent to respond to their request. The Board heard testimony from the Complainant that pages 14 through 20 and page 24 were not disclosed as required under section 299, and page 13 and pages 21 through 23 were not disclosed as required under section 300 therefore must not be heard by the Board. The Complainant asked the Board to give regard to decisions of the Board made earlier in the week of similar complaint.
- [7] The Respondent testified, as they did previously in the week, that they provided all the information required under sections 299 and 300 of the Act.
- [8] The Board reviewed each of the pages requested to be redacted in the Respondent's Disclosure document to determine if they are permissible under sections 299 and 300 of the Act:
- Page 13: comparable property rent roll – it is neither a specific record nor document used for the preparation of the subject assessment, nor is it a summary of the assessment for an assessed property within the municipality; therefore it is permitted to remain in evidence.
 - Pages 14-20: Assessment Request for Information [ARFI] for a nearby property – they are neither specific records nor documents used for the preparation of the subject assessment, nor are they a summary of the assessment for an assessed property within the municipality; therefore they are permitted to remain in evidence.

- Page 21: explanation of the Respondent's opinion of sublease data – it is neither a specific record nor document used for the preparation of the subject assessment, nor is it a summary of the assessment for an assessed property within the municipality; therefore it is permitted to remain in evidence.
- Page 22: 2012 NW 'A+' Lease Comparables chart – it is neither a specific record nor document used for the preparation of the subject assessment, nor is it a summary of the assessment for an assessed property within the municipality; therefore it is permitted to remain in evidence.
- Pages 23-24: comparable property photographs – they are neither specific records nor documents used for the preparation of the subject assessment, nor are they a summary of the assessment for an assessed property within the municipality; therefore they are permitted to remain in evidence.

[9] **The Board denied the request to redact information from the Respondent's disclosure.**

Preliminary Issue 2 - Confidentiality:

[10] The Complainant requested the Board to not accept pages 16 through 20 in that the supplier of this information clearly hand wrote on each page the following:

"Confidential document. Not to be copied. Not to be disclosed to any third parties, appeal tribunals or any other public forums. Not to be used for supporting assessments. Only to be used in preparing mass appraisal based tax assessments."

[11] The Complainant did not provide reference to any legislation or regulation in regards to the request only to suggest it was in contravention of the *Freedom of Information and Protection of Privacy Act* (FOIP).

[12] The Respondent testified that all information is supplied with regard to confidentiality and as permitted through FOIP. All information which could specifically identify a business has been removed. This information is supplied to provide comparability to the subject only.

[13] **The Board found that section 301 and 301.1 of the Act specifically addresses the concern of the Complainant and the information is permitted. The request is denied.**

Preliminary Issue 3 - Cross Reference:

[14] The Complainant and the Respondent requested the Board to carry forward and give regard to all evidence, testimony, argument, questions and answers as recorded in the hearing for decision number CARB 1102/2012-P (600 Crowfoot Crescent NW).

[15] No additional objections in respect of procedural or jurisdictional matters were raised.

SECTION B: Issues of Merit

Property Description:

- [16] Constructed in 2001, the subject – 400 Crowfoot Crescent NW, located just north of Crowchild Trail near Nose Hill Drive in an area known as Crowfoot Crossing, consists of two structures; one building is a five storey suburban office building, the other building is a single storey retail space.
- [17] The Respondent prepared the assessment showing 45,198 square feet of office space graded as an 'A+' quality, 4,640 square feet for a bank, 18,359 square feet of retail space, and 77 enclosed parking stalls. The site has an area of 122,713 square feet. During review of the evidence the Board notes the size and shape (R1 p. 8) of 400 and 600 Crowfoot Crescent NW appear to be different, yet the Non-Residential Properties – Income Approach Valuation (R1 p. 6) indicate the same 122,713 square feet. There is the possibility that one of the records is incorrect; however, it does not affect the assessment nor the Board's decision, as the income approach to value was utilized.

Matters and Issues:

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

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

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

1. *Should the property assessment be comparable with The City of Calgary Business Assessment of the same property?*
2. *What is the correct rental rate that is to be used to derive the assessment?*

Complainant's Requested Value:

- \$17,100,000 on complaint form
- \$18,530,000 in disclosure document
- \$18,530,000 at hearing confirmed as the request

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

Matter #3 - *an assessment amount*

Question 1 *Should the property assessment be comparable with The City of Calgary Business Assessment of the same property?*

- [20] Just as in CARB 1102/2012-P, the Complainant argued that the assessment needed to be

adjusted for reasons of equity with business assessments within the same property.

- [21] The premise the Complainant made is the manner in which business assessments are derived are identical to the manner in which property assessments are derived.
- [22] The Complainant provided the 2012 Business Assessment Notice (C2a p. 39) for a tenant within the subject; Halliburton Group Canada Inc. at 500 400 Crowfoot Crescent NW. This 10,691 square foot space was assessed for business tax purposes at \$192,438 or \$18 per square foot, which is \$3 per square foot less than the property tax assessment for the same space.
- [23] The Complainant filed a complaint over the business assessment and the Respondent provided amongst other evidence a table of comparables (C2a p. 37). Within this table there is a note stating that "A \$3 Tenant Improvement allowance is granted for A+ businesses". The Complainant then compared it to the property assessment (C2a p. 27) and seen the direct correlation of office space assessed at \$21 per square foot for a property assessment or \$3 higher per square foot than the same space business assessment.
- [24] The Complainant identified the assessment calculation as an '*Income Approach Direct Comparison Methodology*'. The Complainant's narrative (C2a pp. 11-12) explains their understanding of the correct manner in which to calculate an assessment. The Complainant made special note of a quote within '*The Appraisal of Real Estate 2nd Edition*', wherein an investor is defined. Subsequent quotes from another publication; '*The Appraisal of Real Estate Second Canadian Edition*', refer numerous times to how an appraiser does this or that.
- [25] The Complainant further led the Board through legislation, Board orders and court decisions to show that the assessor has the duty to base assessments on actual market value; however, in the opinion of the Complainant, the Board does not have the same duty and can rely on the evidence presented to make a decision.
- [26] The Respondent reviewed the Act section 467(3) to point out; that the Board "*must not alter any assessment that is fair and equitable*". The Board was presented information (R1 p. 35) wherein the Respondent asserts that the consistent application of the Income Approach is as important to the actual factors. In the example presented, the Respondent showed how an allowance can be included or excluded and the same relative value is derived as long as all comparables are calculated in the same manner. A Supreme Court of British Columbia decision and other Board decisions were reviewed to support the position – that a change in one part of the assessment calculation must include an adjustment to the other parts of the equation.
- [27] The Respondent provided information to the Board on the principles of property valuation methodology with particular interest in the income approach to valuation as employed by the assessor to derive the subject's assessment. The Respondent presented on the different kinds of interest in a property, including; fee simple, leased fee and leasehold interests.
- [28] The Respondent drew the Board's attention to two Court of Queen's Bench decisions (*Calgary (City) v. Canadian Natural Resources Limited*, 2010 ABQB 417 and 697604 *Alberta Ltd. V. Calgary (City of)*, 2005 ABQB 512). The Board is to understand from these

decisions how a business assessment is calculated, how a property assessment is calculated, and how they differ.

- [29] **The Board carefully examined the materials provided by both parties and found that the Complainant did not convince the Board that the assessment of property and business are the same; therefore, the property assessment is not comparable with business assessment of the same property and equity cannot be expected.**

Question 2 Is the rental rate used to derive the assessment correct, fair and equitable?

- [30] The Complainant argued that the rental rate used to derive the assessment is too high at \$21. The Complainant contends the correct rental rate is \$17 when considering the comparables.
- [31] The Complainant argued that the rental rate used to derive the assessment should be \$14 if assessment is equitable with The City of Calgary Business Assessment. The Board above determined that business assessments and property assessments are different therefore equity between them is not expected.
- [32] The Complainant asserted there is a material error in the market rent calculation because the Respondent incorrectly stated a sublease at a rental rate of \$7 was a primary lease with a rental rate at \$27. This error was found during a hearing for the subject on their business assessment. The Complainant states that the Respondent at the business assessment hearing provided five comparables; one within the subject, two next door and two more nearby. The lease incorrectly reported accounted for 5,683 square feet (40.8%) of the total 13,940 square feet represented on the comparables table.
- [33] The Complainant suggests that by replacing the primary lease information with the correct sublease information will correct the error and derive the correct rental rate for the assessment at \$17.
- [34] In response, the Respondent explained their position on subleases. It is a rental agreement between a tenant who already holds a lease and someone who wants to use part or all of the tenant's space. In a sublease, the tenant assigns certain limited rights that they already hold to the leased property. The Respondent does not consider sublease transactions as an indication of market value for many reasons, including; typically short-term, generally smaller spaces, and they typically do not represent the total economic rent received by the landlord.
- [35] The Respondent led the Board through legislation and regulation to show exactly how an assessment is derived. Reference is made to section 2(b) of MRAT wherein it states; "*An assessment of property based on market value must be an estimate of the value of the fee simple estate in the property*". The Respondent further asserted that; "*...the Income Approach Model requires the calculation of Potential Net Income for each property, based on **“Current Economic”** rent, **as at the valuation date.***" Emphasis added by the Respondent. (R1 pp. 30-31)
- [36] The Respondent continued by explaining that historic leases do not derive Fee Simple.
- [37] The Respondent recognized the error created by using incorrect leasing information for

their '2012 NW A+ Lease Comparables' chart (C2a p. 37). The Respondent created a new chart (R1 p. 22) and removed four leases that had challenges of one sort or another and replaced them with four leases that have been verified as correct. The results are a median rental rate of \$20 and weighted mean rental rate of \$20.65 versus the rental rate deriving the assessment of \$21.

- [2] As usually is the practice, the Board, when presented with evidence of a poor comparable; will delete it and substitute it with a good comparable if available, and then recalculate. In this case removing the one bad lease comparable results in a mean rental rate of \$19.25, a median rental rate of \$20 against an assessed rental rate of \$21. The new calculation is much closer to the assessment than the request.
- [3] **The Board carefully examined all the evidence provided by the Complainant and failed to find that a *prima facie* case existed. The evidence did not convince the Board that there is a problem with the assessment.**
- [4] **The Board finds the rental rate, for the office space portion, correct at \$21 per square foot and finds that the entire assessment is correct, fair and equitable.**


Matter #4 - an assessment class

- [5] 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."
- [6] The Board did not hear any evidence requesting a change in an assessment class from its current non-residential designation.

Board's Decision:

- [7] **After considering all the evidence and argument before the Board it is determined that the subject's assessment is correct and is confirmed at \$22,810,000. This value reflects market value and is fair and equitable.**

DATED AT THE CITY OF CALGARY THIS 21 DAY OF August 2012.


J. Dawson
Presiding Officer

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

NO.	ITEM
1.	C1 Complainant Rebuttal Disclosure – 16 pages
2.	C2a Complainant Disclosure – pages 1-81 of 118 pages
3.	C2b Complainant Disclosure – pages 82-118 of 118 pages
4.	C3 Complainant Addenda – 40 pages
5.	R1 Respondent Disclosure – 116 pages

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.*

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).*

Access to summary of assessment

- 300(1)** *An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive a summary of the assessment of any assessed property in the municipality.*
- (1.1)** *For the purposes of subsection (1), a summary of an assessment must include the following information that the assessor has in the assessor's possession or under the assessor's control:*
- (a) *a description of the parcel of land and any improvements, to identify the type and use of the property;*
 - (b) *the size of the parcel of land;*
 - (c) *the age and size or measurement of any improvements;*
 - (d) *the key factors, components and variables of the valuation model applied in preparing the assessment of the property;*
 - (e) *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) if it is satisfied that necessary confidentiality will not be breached.*

RSA 2000 cM-26 s300;2009 c29 s6

Right to release assessment information

- 301** *A municipality may provide information in its possession about assessments if it is satisfied that necessary confidentiality will not be breached.*

1994 cM-26.1 s301

Relationship to Freedom of Information and Protection of Privacy Act

301.1 Sections 299 to 301 prevail despite the Freedom of Information and Protection of Privacy Act.

RSA 2000 cM-26 s299;2009 c29 s5

Decisions of assessment review board

- 467(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

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	Rental Rate