

AMENDED
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:

Localmotive Inc.
(as represented by Altus Group Limited), COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER
I. Fraser, MEMBER
A. Wong, 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:	078001401
LOCATION ADDRESS:	1240 20 Avenue SE
LEGAL DESCRIPTION:	Plan 1594F; Lot A, B, C
HEARING NUMBER:	68513
ASSESSMENT:	\$ 9,540,000

- [1] This complaint was heard on the 14 and 15 days of August, 2012 at the office of the Assessment Review Board [ARB] located at Floor Number 4, 1212 31 Avenue NE, Calgary, Alberta, Boardroom 2.
- [2] Appeared on behalf of the Complainant:
- D. Chabot Agent, Altus Group Limited
- [3] Appeared on behalf of the Respondent:
- M. Ryan Assessor, City of Calgary

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

Preliminary Issue 1 - Valid Assessment Complaints Agent Authorization:

- [4] The Board, through its typical process, inspected the forms prescribed within Matters Relating to Assessment Complaints [MRAC] regulation; Schedule 1) Assessment Review Board Complaint [ARBC] form, and Schedule 4) Assessment Complaints Agent Authorization [ACAA] form.
- [5] In section 4 of the ACAA under the heading Acknowledgment and Certification there is a declaration stating:
By signing below, I acknowledge and certify that:
1 *I am the assessed person or taxpayer identified in section 1, or a legally authorized officer of the assessed person or taxpayer.*
- [6] The ACAA form presented to the Board contained handwritten disclaimer next to the business name stating; *"by its Authorized Agent MDC Property Services Ltd."*
- [7] The Board found, in the event MDC Property Services Ltd. is an authorized agent, that an agent cannot:
- i. delegate agency to another agent,
 - ii. was not the assessed person identified in section 1, nor
 - iii. was the taxpayer identified in section 1.
- [8] **The Board found that the ACAA form was invalid.**
- [9] The consequences for a breach of section 51 of MRAC (the requirement to establish agency) is harsh; if an unauthorized agent filed the complaint or ARBC, then the complaint is invalid because it requires an ACAA in order to be valid. If the ARBC is invalid under section 2(2)(b), the CARB must not hear the complaint.
- [10] If the ARBC is filed by the assessed person or taxpayer then agency need only be established at the hearing and the ARBC is valid and the hearing may continue as long as a valid ACAA is provided at the hearing.
- [11] **In this hearing, the Board found that the intent was present to file a valid Assessment Review Board Complaint with what was thought to be a valid Assessment Complaints Agent Authorization. In the interest of fairness and natural justice, the Board granted the unauthorized agent time to establish agency. The hearing recessed to 9 AM August 15,**

2012 at which time a valid Assessment Complaints Agent Authorization was provided.

- [12] No additional procedural or jurisdictional matters were raised.

SECTION B: Issues of Merit**Background:**

- [13] The railroad, in the early 1900's, was an important transportation system where manufacturing relied on their existence to receive raw materials and to ship finished product. Today the railroad remains important; however, buildings such as the subject have been repurposed. The subject property, built as a manufacturing plant, is repurposed for use as office space. Named LocalMotive Crossing, the subject three-storey sandstone building was renovated in 2007 that included extensive updates and an addition while retaining the character from its past. (R1 p.12)
- [14] Situated within the boundaries of the Alyth Train Yard, the subject is surrounded by a triangle of train lines; the tracks run adjacent to the subject on the northeast and west sides, while the tracks are near the south side. The only access to the site is via 20th Avenue across a level crossing on the west side. (R1 p. 13)

Property Description:

- [15] Constructed in 1921, the subject – 1240 20 Avenue SE, is a three-storey suburban office building located within the southeast community of Alyth/Bonny Brook. The Respondent prepared the assessment showing 43,402 square feet of office space graded as an 'A+' quality. The site has an area of 63,079 square feet with 79 non-assessable, surface parking stalls. (R1 pp. 7,8 and 22, C1a p. 39)

Matters and Issues:

- [16] Following the hearing, the Board met and discerned that this is the only relevant question which needed to be answered within this decision:
1. *What is the correct typical rental rate for the subject's assessment?*
- [17] No other matters or issues were identified at the hearing or during deliberations. As per Matters Relating to Assessments Complaints [MRAC] regulation, section 13(1)(a, b and c); only matters or issues raised on the complaint form are to form the decision of the Board.

Complainant's Requested Value:

- \$5,350,000 on complaint form
- \$4,960,000 within disclosure document
- \$7,850,000 within rebuttal disclosure document and confirmed at hearing as the revised request

Board's Decision in Respect of Each Matter or Issue:**Question 1 What is the correct typical rental rate for the subject's assessment?*****Complainant's position***

- [18] The Complainant presented several photographs and maps (C1a pp. 15-33 and C1b pp.101-107) to illustrate to the Board that the subject is unique with: a) poor visibility and approach resulting in difficulty locating and accessing; b) constraints and nuisances due to proximity of the railroad; and c) an overall lack of amenities with basic finishes.
- [19] The Complainant established (C1a p. 42) that the single largest tenant is an affiliated company. The current leasing within the central industrial district (C1a p. 45) demonstrated a typical rental rate of \$15. The maps (C1a pp. 47-48) placed the comparables within the vicinity of the subject. The photographs (C1a pp. 49-56) proved the similarity of their comparables.
- [20] The Complainant presented their knowledge of the Respondents quality grading system (C1a pp. 57-59) that indicates that location is the first consideration regarding quality grading.
- [21] The Complainant reviewed the Board's decision for the previous assessment year (CARB 1902/20111-P – C1a pp. 41-44) wherein the Board set the grading from 'A' to 'B' based on numerous factors including; location, age, access, rental rate, irregular shape, railway tracks, exposure, and lack of amenities.
- [22] The Complainant showed the Board the properties that the Respondent deemed comparable and assessed in the same manner: 1) approximately 17 kilometers south at 23 Sunpark Dr SE (C1a pp. 83-85), a modern four-storey office building with 175,336 square feet with 289 enclosed parking stalls. 2) 24 Sunpark Dr SE (C1a pp. 86-88), 210,684 square foot modern office building with 151 enclosed parking stalls. 3) approximately 15 kilometers south at 11012 MacLeod Tr SE (C1a pp. 89-91), 121,479 square foot eight-storey office tower. All three, the Complainant testified, have visibility and access superior to the subject.
- [23] The Board questioned the Complainant regarding the quality grading. In 2011 the Complainant successfully appealed the quality grading but chose not to in 2012. The reason given was because the Respondent has assessed grade 'B' office space at \$13 per square foot when the evidence shows \$15 per square foot for the subject with area leasing demonstrating \$15 per square foot for similar properties. (C1a p. 45)

Respondent's position

- [24] The Respondent presented lease comparables (R1 p. 22) indicating a weighted mean of \$17.55 per square foot, which supports the assessment of \$18 per square foot. The Complainant's September 6, 2011 Assessment Request for Information (ARFI) (R1 pp. 14-19) is included to support the assessment.
- [25] The Respondent presented advertising information of the property from the taxpayer's realtor (R1 pp. 11-13) to show the high regard the owner places on the quality of development and the great location.
- [26] The Respondent presented a screen shot of their internal computer system to show that a

renovation permit of \$3,630,000 was issued in 2006, suggesting that the property must be worth vastly more than the amount requested by the Complainant.

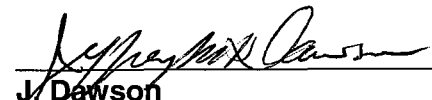
Board's findings

- [27] The Board finds the advertisement provided from the Respondent of no use. The taxpayer making its best efforts to lease a property will address obvious shortcomings up front and in a positive tone. An advertisement indicating a poor location with no visibility within an old building would not likely attract many or desirable tenants.
- [28] The Board finds the permit information dating to 2006 of no consequence for the current assessment.
- [29] The Board does not have compelling evidence that the majority tenant iStockphoto LP is an affiliated company; the Board decision in 2011 (CARB 1902/20111-P – C1a pp. 41-44) states it is affiliated without hesitation. The Respondent provided no evidence to dispute the claim of affiliation. Regardless, the Board finds the Respondent's evidence (R1 p. 22) not credible for the subject's assessment; six of the seven leases support the Complainant's request with a range of \$14 to \$16 per square foot and a median of \$15 per square foot. One lease at \$29 inflates the weighted mean and certainly can be considered an outlier. The fact that this outlier is the very lease being purported as an affiliated company gives more weight to remove it from the analysis.
- [30] The Board finds the evidence from the Complainant credible (C1a p. 45), wherein the central industrial district indicates a median of \$15 per square foot and a weighted mean of \$14.61 per square foot. The Respondent testified that all the comparables are graded 'A-' versus the assessment 'A+' therefore not comparable. The Board finds the comparables all have superior access and visibility. The only criterion the Board finds may suggest an 'A+' grading by the Respondent is the subject lease of \$29. The Board finds the Respondent graded the subject by rent roll versus all the criteria listed within their stated grading system. (C1b pp. 163-173)
- [31] Furthermore, the Board finds the Respondent's grading of the subject as an 'A+' in 2012 somewhat confusing when the Board downgraded the subject in the 2011 assessment from an 'A' to a 'B'. This error has caused an unnecessary hearing in 2012; wasting taxpayer time and resources.
- [32] **The Board finds the correct typical rental rate for the 2012 assessment of the subject to be \$15 per square foot for the office space.**

Board's Decision:

- [33] After considering all the evidence and argument before the Board it is determined that the subject's assessment is changed to a value of \$7,850,000 which reflects market value and is fair and equitable.

DATED AT THE CITY OF CALGARY THIS 15 DAY OF October 2012.


 J. Dawson
 Presiding Officer

Dissenting Reasons of Panel Member I. Fraser:

- [34] Section 13(1)(c) of Matters Relating to Assessment Complaints Regulation, AR 310/2009 requires a decision of an assessment review board to include any dissenting reasons where such a dissent exists:

13(1) For the purposes of section 468 of the Act, a decision of an assessment review board must include
 (c) the reasons for the decision, including any dissenting reasons, and

- [35] I regret that I am unable to concur with the reasons of my colleagues in which they would allow the complaint and reduce the assessment as they concluded.

- [36] Both parties, Complainant and Respondent, have applied the income approach to value in their respective determination of the market value of the subject property. The only issue argued by the Complainant is the assessed rental rate of \$18.00 per square foot as applied in the determination of the subject property Potential Net Income. The Complainant requests the assessed rental rate be reduced to \$15.00 per square foot.

- [37] The Respondent presented a copy of the subject property 'Master Rent Roll' [Exhibit R-1, pp.17-19] having an 'as of' date 01-Jul-2011. From the 'Master Rent Roll' the relevant data is summarized on the table following.

Unit	Tenant	Lease Start	Lease End	Area (s.f.)	Rate / (s.f.)
101S	Vacant			4,591	
102S	C.P.Loewen Enterprises	Apr. 1, 2011	Mar. 31, 2018	2,894	\$15.00
103S	1173373 Alberta Ltd.	Mar. 1, 2009	Mar. 31, 2018	1,012	\$29.12
104S	Vacant			283	
105S	Industrial Disease	Mar. 1, 2009	Feb. 28, 2009	895	\$16.00
106N	Industrial Disease	Mar. 1, 2009	Feb. 28, 2019	2,200	\$16.00

201S	IStockphoto LP	May 1, 2008	Apr. 30, 2018	14,651	\$29.00
301S	IStockphoto LP	Apr. 1, 2010	Apr. 2018	9,122	\$29.00
302N	IStockphoto LP	May 1, 2008	Apr. 30, 2018	6,822	\$29.00
303S	IStockphoto LP	Apr. 1, 2010	Apr. 30, 2018	1,416	\$16.50
				43,886	

- [38] The 'Master Rent Roll' summarizes [R-1, p.19] the monthly rent as being \$86,084.74, being \$1,033,016.88 annualized, and having a weighted average lease rate of \$26.48 per square foot of rented area.
- [39] The Complainant contends that the space occupied by IStockphoto LP, being 32,011 square feet representing 72.9% of the rentable area, is a related company with the property owner and these leases should be disregarded as '*non-arms length*'. In support of this contention the Complainant relies on the decision of the assessment review board [Exhibit C-1, p.42; CARB 1902/2011-P] regarding the appeal of the subject property assessment in the prior year, 2011. In its summary of evidence [CARB 1902/2011-P] the CARB writes; "The Complainant also indicated that 21,473 sq. ft. has a non-arms length lease in place to one affiliated company - -". The decision [CARB 1902/2011-P] does not identify the purported affiliated company nor does the decision identify the documentary evidence which supported the contention of affiliation. In the current appeal I find the reliance on the quoted statement to be non-determinative. Without documentary evidence to support the contention of affiliation I must accept that the leases are directly representative of market leases between a prudent tenant and a prudent landlord.
- [40] Based on the evidence before the board on two additional matters relating to 'parking' revenues and 'rentable area' as witnessed by the subject property 'Master Rent Roll', in evidence [R-1, pp. 17-19].
- [41] The 'Master Rent Roll' [R-1, pp. 17-19] reports a total monthly income stream of \$6,275.00 attributable to 'parking', a revenue stream resulting from the rental of parking spaces. This has been overlooked in the conclusion of my colleagues yet the evidence is before the board. The impact on the assessment equates to an oversight of \$1,075,714.00 based on an annualized revenue stream of \$75,300.00 (\$6,275 X 12) and further capitalized at the assessed capitalization rate of 7.00%, (\$75,300.00 / 0.07). This oversight should be corrected by the assessor in the next assessment.
- [42] Whereas the subject property has been assessed as having 43,402 square feet the 'Master Rent Roll' reports the 'Area Leased' as 39,012 square feet, 'Vacant Area' of 4,874 square feet and the total 'Rentable' area to be 43,886 square feet. This discrepancy of an additional 484 square feet has not been corrected for in the conclusion of my colleagues. This undisputed rentable area should be corrected by the assessor in the next assessment. While the resultant assessment attributable to this oversight may seem minor at first blush the attributed value on the assessment equates to an increase of \$106,480 (484 square feet X assessed rate per square foot (\$9,540,000 / 43,402 = \$220.00 per square foot)).
- [43] **For these reasons I must respectfully disagree with my colleagues and would confirm the assessment at \$9,540,000.**

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

NO.	ITEM
1.	C1a Complainant Disclosure – 100 pages (pages 1-100)
2.	C1b Complainant Disclosure – 73 pages (pages 101-173)
3.	R1 Respondent Disclosure – 60 pages
4.	C2 Rebuttal Disclosure – 33 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.*

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Income Approach	Rental Rate
			Dissenting Reasons	