

**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:

*Willow Park Capital Corp.*  
*(as represented by Altus Group Limited), COMPLAINANT*

and

*The City of Calgary, RESPONDENT*

before:

*J. Dawson, PRESIDING OFFICER*  
*A. Wong, MEMBER*  
*J. Joseph, 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:

<b>ROLL NUMBER:</b>	<b>130141252</b>
<b>LOCATION ADDRESS:</b>	<b>10325 Bonaventure Drive SE</b>
<b>LEGAL DESCRIPTION:</b>	<b>Plan 6946JK, Block 3 – Multiple Legal</b>
<b>HEARING NUMBER:</b>	<b>67973</b>
<b>ASSESSMENT:</b>	<b>\$ 10,810,000</b>

- [1] This complaint was heard on the 13 day 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 - Disclosure Under sections 299 and 300 of the Act:**

- [4] The Complainant requested that certain evidence contained within the Respondent's disclosure document be redacted because it was not disclosed as required by sections 299 and 300 of *the Act*.
- [5] The Complainant presented documents (C2a pp. 4-32) regarding the current system and the designed effect to promote efficiency and fairness. Efficiency is achieved by a system with only one level of appeal with a requirement to hear and decide by the end of the year. Fairness is achieved by requiring the assessing authority to provide sufficient information for an assessed person to understand their assessment, and on the taxpayer making a complaint by requiring more detail in complaint forms.
- [6] The Complainant paraphrased sections 299 and 300 suggesting *the Act* permits an assessed person to request sufficient information to understand their assessment and to compare their assessment to those of similar properties. Matters Related to Assessment Complaints [MRAC] regulation section 9(4) provides the remedy for the Respondent's failure to disclose requested information; that information cannot be used against them before a hearing of the Board.
- [7] The Complainant also presented on the responsibility of the taxpayer. In sections 294 and 295 of *the Act*; wherein, the assessed person must permit access and provide information to the assessor. Failure to comply with the request for information or inspection by an assessor will mean the taxpayer may lose their right of appeal or have that information prohibited before a hearing of the Board, as per section 9(3) of MRAC.
- [8] The Complainant's argument is that these provisions provide for greater exchange of information, more transparency, and fairness.
- [9] The Complainant's material referred the Board to recent decisions in support of the application including:
1. *Edmonton (City of) v. Melcor et al* (April 4, 2012), Edmonton No. 1103-18120 (Alta. QB); wherein the justice states: "*The assessment challenge process is intended to be transparent and fair. The City's (Edmonton) suggested interpretation could lead to mischief in the process.*"
  2. *Canadian Natural Resources Ltd. v. Wood Buffalo (Regional Municipality)*, 2012 ABQB 177. [CNRL]; wherein the justice states: "*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."*

- [10] The Complainant's presentation continued; the court has recognized the difficulty for an assessed person to know what information to request and suggests the assessor is responsible for giving the assessed person all of the information respecting how the assessment is prepared.
- [11] The Complainant outlined the time restrictions placed on requests for information through sections 299 and 300 of *the Act*; Section 27.4(2) of Matters Relating to Assessments and Taxation [MRAT] regulation imposes a 15 day response to a request sent under section 299 of *the Act*. Similarly, section 27.5(2) of MRAT provides 15 day response for request made under section 300 of *the Act*.
- [12] The Respondent indicated that their argument is identical to decision CARB 1339/2012-P, and that the information required under sections 299 and 300 of *the Act* has been provided. Even if the Board found otherwise, the remedy for failure to disclose is a complaint to the Minister not this Board.
- [13] The Board reviewed each of the pages in the Respondent's Disclosure document, which are subject to the requested redaction, and found that they are disclosed in violation of *the Act* and MRAC.
- [14] **The Board redacted pages 42 through 66 of the Respondent's disclosure as they were not disclosed as required under sections 299 and 300 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.**
- [15] No additional procedural or jurisdictional matters were raised.

## **SECTION B: Issues of Merit**

### **Property Description:**

- [16] Constructed between 1978 and 1979, the subject – 10325 Bonaventure Drive SE, is comprised of two buildings, located one block east of MacLeod Trail just south of Southland Drive SE in an area known as Willow Park.
- [17] The Respondent prepared the assessment showing 77,289 square feet of suburban office space graded as a 'B' quality within the southwest stratification area. The site has an area of 103,604 square feet.

### **Matters and Issues:**

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

Matter #3 - an assessment amount  
Matter #4 - an assessment class

[19] Following the hearing, the Board met and discerned that this is the relevant question which needed to be answered within this decision:

1. *What is the correct typical rental rate for the subject's assessment?*

**Complainant's Requested Value:**

- \$7,560,000 on complaint form
- \$9,900,000 in disclosure document and confirmed as the request

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

***Matter #3 - an assessment amount***

**Question 1 *What is the correct typical rental rate for the subject's assessment?***

***Complainant's position***

- [20] The Complainant requested that all information, evidence, testimony, questions and answers be brought forward from the hearing regarding decision CARB 1339/2012-P.
- [21] The Complainant presented to the Board a single question on typical rental rate; requesting a value of \$12 per square foot versus the assessed value of \$13 per square foot.
- [22] The Complainant reviewed the subject details (C1 pp. 15-23) including; map, photos, and Non-Residential Properties – Income Approach Valuation.
- [23] The Complainant presented leases from within the subject during the valuation year (C1 p. 26) and during the four months prior to the valuation date (C1 p. 27). The four months prior to valuation date chart represented 15,292 square feet of leasing or nearly 20% of the subject's leasable area.
- [24] The Complainant provided a 2011 CARB decision (CARB 2397/2011-P, C1 pp. 28-31) to provide precedence on using leases within the subject if the quantity is sufficient to establish a typical rate.

***Respondent's position***

- [25] The Respondent agreed that all information, evidence, testimony, questions and answers be brought forward from the hearing regarding decision CARB 1339/2012-P.
- [26] The Respondent provided a general overview of the property, an advertisement from a realtor, and the Assessment Request for Information [ARFI] dated April 27, 2011 for the subject.

- [27] The Respondent drew the Boards attention to a third party report prepared using second quarter 2011 results (R1 p. 79). The report indicated city-wide 'asking' lease rates for 'B' graded buildings is \$13.24 per square foot, which supports the assessment of \$13 for typical market rent.
- [28] The Respondent noted an additional third party report (R1 p. 73) that showed Calgary suburban south office average 'asking' head lease rates for quarter two 2011 at \$15 per square foot.
- [29] The Complainant stressed that both reports are opinions of industry professionals on 'asking' rental rates, not an analysis of actual signed rental rates.
- [30] The Respondent presented no rental rate study or equity comparables.

***Board's findings***

- [31] The Board prefers to see leasing activity in numerous buildings to establish typical market rents. In this case the only reliable evidence was supplied by the Complainant; five leases, all signed during a four month period immediately prior to the valuation date, and representing 20% of the subject. The Respondent failed to provide any leasing activity to substantiate the assessment.
- [32] The Board finds the Complainant's evidence of \$12 per square foot median on five leases within the subject (C1 p.27) to be persuasive.
- [33] **The Board finds the evidence and testimony leads to a typical office rental rate within the subject of \$12 per square foot as assessed.**

***Matter #4 - an assessment class***

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

**Board's Decision:**

- [35] **After considering all the evidence and argument before the Board it is determined that the subject's assessment is changed to a value of \$9,900,000, 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

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

<b>NO.</b>	<b>ITEM</b>
1.	C1 Complainant Disclosure – 74 pages
2.	R1 Respondent Disclosure – 80 pages (pages 1-41 and 67-105)
3.	C2a Rebuttal Disclosure – 100 pages (pages 1-100)
4.	C2b Rebuttal Disclosure – 87 pages (pages 101-187)

*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.*

<b>Municipal Government Board use only: Decision Identifier Codes</b>				
<b>Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
CARB	Office	Low Rise	Income Approach	Rental Rate