

**CALGARY  
COMPOSITE 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:**

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

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***S. Barry, PRESIDING OFFICER***

***D. Julien, MEMBER***

***J. Rankin, 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>067095307</b>    |
| <b>LOCATION ADDRESS:</b> | <b>550 11 Av SW</b> |
| <b>HEARING NUMBER:</b>   | <b>66922</b>        |
| <b>ASSESSMENT:</b>       | <b>\$14,150,000</b> |

This complaint was heard on the 14th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- *D. Genereux, Altus Group Limited*

Appeared on behalf of the Respondent:

- *L. Wong, City of Calgary*

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

[1] Should pages 25 through 34 of the Respondent's disclosure document (R1) be excluded under s. 9(4) of *Matters Relating to Assessment Complaints Regulation*, AR 310/2009 (MRAC)?

[2] The Complainant alleged that the information in the referenced pages was requested pursuant to s. 299 and s. 300 of the Act but had not been received.

[3] The Complainant confirmed that notice of this request for exclusion had not been disclosed pursuant to s. 8 of MRAC but supplied a document in support of his argument that was received by the Board and labelled C1. Additionally, the Complainant provided a letter dated April 13, 2012 from the City of Calgary, and received by the Board and labelled C2, that advised, essentially, that the information requested would not be provided other than that which was available on the City's website.

[4] The Respondent noted that the applications for ss. 299/300 included in C1 do not specify what information the Complainant requested. There was a reference to "see attached", but nothing was attached.

[5] The Respondent also noted that the information on pages 25 to 32 are available on the City's website and are responsive to comparables used in the Complainant's disclosure document. The lease detail on page 33 was responsive to the Complainant's disclosure and was not used for the purposes of preparing the subject assessment. The information on p.34 is the property of Alberta Data Search and not under the control of the City.

[6] The Board provided an oral decision at the hearing rejecting the Complainant's s. 9(4) MRAC request for the reasons outlined below.

[7] The ss. 299/300 applications were dated March 13, 2012, and were not specific as to the nature of the information requested. The s. 299 request appeared to have resulted in the release of the Assessment Explanation Supplement for the subject, since that was contained in the Complainant's disclosure document C3. The s. 300 request, however, contained no information that was helpful to or required by the City in order to respond to the request.

[8] The Board was further concerned that although the request was made on March 13 and the City responded negatively on April 13, the Complainant's disclosure document C3,

submitted July 3, 2012 did not contain a request or notice of request to be made under s. 9(4) of MRAC.

[9] The Board had two issues under s. 9 of MRAC. The first was the failure of the Complainant to disclose the s. 9(4) request for the exclusion of evidence. The second was the Complainant's request to exclude certain evidence from the City's disclosure.

[10] In the first instance, if ss. 299/300 requests have been made and the Complainant is of the belief that those requests did not achieve an appropriate response, then the Complainant should, from a practical standpoint, consider a pre-emptive note to that effect in the initial disclosure. At the very least, having reviewed the Respondent's disclosure, the Complainant had the opportunity to and, perhaps, must take the opportunity to raise the issue in his rebuttal.

[11] In the second instance, the Board was satisfied that the materials requested for exclusion were responsive to the Complainant's C3 disclosure and they were not excluded from consideration at the hearing..

#### **Property Description:**

[12] The property under complaint is an 11 storey office building, known as Pattison Square, located at 550 11 Av SW in zone 3 of the Beltline District (BL3). It was constructed in 1982 and has an assessable area of 97,340 square feet (sq.ft.). It is assessed as a B class building using the Income Approach to Value with a typical capitalization rate (cap rate) of 7.75 per cent.

#### **Issues:**

1. **Is the Assessment of the subject inequitable given that competitive Class B properties are assessed at around 65% of actual value?**
2. **If the Assessment is inequitable, does the Complainant's application of a 12 per cent capitalization rate correct the inequity?**

[13] There is no complaint with respect to the valuation method, or with the value of any of the components or variables used in the income approach, with the exception of the cap rate.

#### **Complainant's Requested Value:**

[14] The Complainant requested that the assessment be reduced to \$9,140,000.

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

##### **Issue 1: Equity**

[15] The Complainant's position is that, although the property under complaint is assessed at 100 per cent of its market value, other class B buildings in the Beltline are assessed at only 65 per cent of their actual value and that creates an inequity for the subject.

[16] In support of his argument, the Complainant provided information for six properties that, he claimed, were comparable to or competitors of the subject. The name, address, age, assessment class, 2012 assessment, sales price and year of sale were provided for each. The dates of sale ranged from April 15, 2009 to January 18, 2012. The properties ranged in age from 1955 to 1980 and included one C class building among the other 5 B class buildings. Excluding the Class C comparable, the properties ranged in size from 49,192 sq.ft. to 137,782 sq.ft. The 2012 assessments were divided by the sales price in order to demonstrate an assessment to sales ratio (ASR). In his calculation, the Complainant showed a range of ASRs from 0.50 to 0.85 with an average of 0.66. This, he said, supported his contention that other B class buildings were only assessed at 65 per cent of market value.

[17] In the first instance, the Board discarded the one C class building from consideration because the Complainant's argument was based on the assessment of B class buildings.

[18] The Respondent provided Income Approach calculations for four of the Complainant's five comparables that showed that the 7.75 per cent cap rate used in the assessment calculation for the subject had also been used for those properties. The Respondent also provided documentation of one sale on April 1, 2011 that demonstrated a 7.61 per cent cap rate. While not a study, per se, it was an indicator that supported the applied cap rate.

#### **Decision on Issue 1:**

[19] The Complainant did not demonstrate that the subject property was inequitably assessed or that other B class buildings were assessed at only 65 per cent of actual value for the following reasons.

[20] The Board noted that the sales price evidence was provided through RealNet reports and not supported by Land Titles documentation. Some of the RealNet reports were marked draft and others were marked final. It appeared that only one page of the report had been provided for consideration in each instance. There was no information given to allow the Board to conclude that the sales were otherwise valid, excluding non-arm's length transactions or other considerations that might affect the sales price. Some of the reports showed a cap rate at date of sale; others did not. There was not sufficient property detail information provided for the Board to determine if these B class buildings were indeed comparable to the subject.

[21] The other concern identified by the Board was the validity of a methodology where there had been no attempt to adjust the sales prices to the valuation date of July 1, 2011. As noted, some of the sales were post facto, one by more than six months and two preceeded the valuation date by as much as two years. The 2012 assessment is intended to reflect the market value of the property, using mass appraisal, on July 1, 2011. The sales data, therefore, have to be adjusted back to or forward to that date for the ASR to have some relevance. In the alternative, the Complainant has to show that no adjustment is required. He has done neither.

[22] The Government of Alberta's manual "Principles of Assessment 1 for Assessment Review Board Members and the Municipal Government Board Members" is quite clear, specifically as stated on p.47: "A ratio study compares assessments to indicators of market value. Market values are usually represented by sales prices; the actual sales price may be adjusted for time of sale to the valuation date, financing, personal property or other considerations. Sales that do not represent open-market arm's-length transactions should not be used in ratio studies."

**Issue 2: Application of 12 per cent cap rate to achieve equity.**

[23] Given that the Complainant was not able to demonstrate an inequity in the assessment within the building class, it is not necessary for the Board to consider applying the requested 12 per cent cap rate to the subject property. However, the Board noted an issue with respect to methodology in the Complainant's calculation that should be addressed.

[24] The Complainant derived the requested cap rate by applying the City's 7.75 per cent typical (assessed) cap rate for July 1, 2011 to the unadjusted sales prices of the comparables to obtain what he referred to as an effective net income. The result of that calculation was then divided by the 2012 assessment to achieve a cap rate that brought, he said, the assessment to 65 per cent of market value – for equity.

[25] Again, the *Principles of Assessment* manual referenced above is clear that a cap rate is derived from dividing the net operating income (not an effective operating income) by the sale price. Net operating income accounts for actual income and expenses. Simply backing out a typical, as of July 1, 2011, cap rate from a sale in 2009 or 2012 does not result in a valid net operating income.

[26] Had the Board come to a different decision on equity, it would have found the cap rate calculation flawed because it does not employ general practice in the industry and results in an erroneous value.

**Board's Decision:**

The 2012 Assessment is confirmed at \$14,150,000.

DATED AT THE CITY OF CALGARY THIS 30 DAY OF August 2012.

  
S. Barry  
Presiding Officer

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

| NO.   | ITEM  |
|-------|---|
| 1. C1 | Complainant Argument with respect to s. 9(4) MRAC |
| 2. C2 | Letter from City of Calgary dated April 13, 2012  |
| 3. C3 | Complainant's Disclosure                          |
| 4. R1 | Respondent's Disclosure                           |
| 5. C4 | Complainant's Rebuttal                            |

*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

| Decision No.: 1506/2012-P |                  | Roll No.: 067095307 |              |                    |
|---------------------------|------------------|---------------------|--------------|--------------------|
| Subject                   | Property Type    | Ppty Sub-type       | Issue        | Sub-Issue          |
| CARB                      | Juris/Procedural | Info Exchange       | s. 9(4) MRAC | s.299/300 Act      |
|                           | Juris/Procedural | Info Exchange       | s. 9(2) MRAC |                    |
|                           | Office           | High Rise           | Income       | Cap Rate<br>Equity |