

**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:**

***Mountain Development Corp.,  
(Represented by Altus Group Limited),***

**COMPLAINANT**

**And**

***The City Of Calgary,***

**RESPONDENT**

**Before:**

***M. Chilibeck, PRESIDING OFFICER  
J. Lam, MEMBER  
K. Farn, MEMBER***

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: 104144290**

**LOCATION ADDRESS: 12 Richard WY SW**

**HEARING NUMBER: 67694**

**ASSESSMENT: \$12,150,000.**

[1] This complaint was heard on 10th day of October, 2012 in Boardroom 8 on Floor Number 3 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

[2] Appeared on behalf of the Complainant:

- A. Izard, representing the Altus Group

[3] Appeared on behalf of the Respondent:

- C. Fox, Property Assessor, representing the City of Calgary

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

[4] Neither party raised any objections to a member of the Board hearing the subject complaint.

**Preliminary Matters:**

[5] The Complainant asked that the preliminary matter of "sufficient information" pursuant to s.299 MGA (Municipal government Act) decided by this Board be brought forward from the hearing of file 68520 (decision 0277-2012-P) to this hearing which is reiterated as follows. This request was agreed to by the Board and the Respondent.

[6] In this case the Complainant requested that the comparable lease rates and analysis for three CRU space categories on page 22 be excluded from exhibit R1, namely space category 0 to 1000 sq. ft., space category 1001 to 2,500 sq. ft. and space category 2,501 sq. ft. to 6,000 sq. ft. Pursuant to s.9 (4) MRAC (Matters Relating to Assessment Complaints Regulation) and decision 0277-2012-P, the Board's decision was to exclude page 22 and not to hear any evidence from the Respondent related to the excluded information.

**Complainant's s.299 and s.300 matter**

[7] Paragraphs eight to sixteen of decision 2077-2012-P (File 68520) are reiterated below as paragraphs eight to sixteen.

[8] "The Complainant objected to the inclusion of lease rate comparables in the Respondent's exhibit because this information was requested of the Respondent and was not provided. Specifically, the Board was asked to remove pages 24, 27, 30, 31 32 and 55 from exhibit R1.

[9] The Complainant argued that a request was made of the Respondent to provide information according to s.299(1) and s.300(1) MGA (Municipal Government Act) and the information was not disclosed according to s.299(1.1) and (2) and s.300(1.1) and (2) MGA. The Complainant argued that therefore the Board must not hear any evidence related to the above pages according to s.9 (4) MRAC (Matters Relating to Assessment Complaints Regulation).

[10] Reference was made by the Complainant to court decision 2012 ABQB 177 (CNRL) and several recent Board decisions rendered in September and October, 2012 on this matter. The court decision said the intent of s.299 is that all relevant information should be supplied to the taxpayer and the Board decisions ruled that when the requested information is not supplied, it will not hear any evidence related to the excluded information.

[11] The Respondent asserted that subsequent to the earlier Board decisions rendered in July, 2011 on the subject matter, information was provided to the Complainant. The Complainant countered that the information did not include lease rate comparables for CRU retail space. The Respondent stated that the Complainant was advised that the CRU retail space lease rates are available for perusal at the office of the Respondent and that there was no response from the Complainant nor did the Complainant attend at the office of the Respondent to peruse the information. The Complainant argued that the CRU lease rates were not made available by the Respondent within 15 days of the request as required by s.27.4 (4) MRAT (Matters Relating to Assessment and Taxation Regulation).

[12] The Board finds that the MGA and its regulations imply that access to assessment information is important for both the assessing authority and the assessed owner. The consequences to either party for not providing information are significant. The Board must not hear any evidence from a municipality relating to information requested by a complainant but not provided to the complainant and conversely the Board must not hear any evidence from a complainant relating to information that was requested by the assessor but was not provided to the assessor.

[13] This has been reinforced by court decision 2012 ABQB 177 (CNRL) and several recent Board decisions rendered in September and October as referred to by the Complainant. The Board reinforces the finding that the Respondent cannot refuse to disclose information when requested by the Complainant or the assessed owner and then disclose the information in its disclosure to the Complainant."

[14] At this hearing the Respondent argued that Calgary CARB decision 0776-2012-P, rendered on July 18, 2012, supports the position that the Respondent is not required to produce the information as requested by the Complainant according to s.299 and s.300 MGA. However, the Respondent had chosen to supply the information on June 21, 2012 wherein it was stated "For rental rate comparables for other Retail spaces including Gas Bars and Restaurant Fast Food and Suburban Office which includes Office warehouse, we invite you into our office to see the data used to determine the assessed rents." The reason for the invite to the Respondent's office was because of the scope and volume of the data which was too numerous to provide in hard-copy form. The Complainant provided to the Board a copy of the June 21<sup>st</sup> information sent to the Complainant. The Complainant agreed to have the information entered as an exhibit at this hearing.

[15] The Complainant argued that the June 21 evidence and court decision 2012 ABQB 177 (CNRL) was not addressed or part of the hearing and decision 0776-2012-P. The Complainant asserted they had attempted three times prior to June 21<sup>st</sup> to obtain the requested information from the Respondent and were not successful. It was argued by the Complainant that the recent Board decisions, rendered in September and October, determined that when the requested information is not supplied, the Board will not hear any evidence related to that information.

[16] The Board finds the additional evidence and argument presented by both parties has not persuaded the Board to allow the Respondent's evidence pertaining to CRU lease rates to remain in the Respondent's disclosure of evidence. The Board takes direction from court decision 2012 ABQB 177 (CNRL) that the Respondent "must deliver or provide access to all information relevant to the assessment calculation, not just that requested by the taxpayer." The Board also finds the recent CARB decisions persuasive that appear to follow the direction of the court decision. Again, as said in decision 0276-2012-P by this Board, the Respondent cannot

refuse to disclose information when requested by the Complainant or the assessed owner and then disclose the information in its disclosure to the Complainant.”

**Property Description:**

[17] The subject property is a strip retail shopping centre with six buildings constructed in 2000 situated on 1.25 acres of land. The subject is classed as a Quality A2 property with a total area of 36,072 square feet (sq. ft.). The total area consists of three categories of CRU (Commercial Retail Unit) space; CRU space, 0-1000 sq. ft., of 4,620 sq. ft., CRU space, 1001-2500 sq. ft., of 16,688 sq. ft., CRU space, 2501-6000 sq. ft., of 12,444 sq. ft. and pad space of 2,320 sq. ft.

[18] The subject is located south of Mount Royal University at the north west corner of Richard RD and Peacekeepers WY in Lincoln Park Community of SW Calgary. It is surrounded by institutional and residential property. The subject is commonly known as Lincoln Park Centre.

**Issues:**

[19] The Complainant identified the matters of an assessment amount and assessment classification on the Assessment Review Board Complaint (Complaint Form) and attached a schedule listing several reasons (grounds) for the complaint. At the hearing the Complainant advised that the assessment amount is under complaint and identified the following issue.

1. The assessed rental rate for the CRU space category of 0 to 1000 sq. ft., 2,501 to 6,000 sq. ft. and 2501 to 6000 sq. ft. should be reduced to \$17 per sq. ft.

**Complainant's Requested Value:**

[20] As per disclosure: \$11,340,000.

**Board's Findings in Respect of Each Issue:**

[21] The subject property is valued by using the capitalized income method wherein the three categories of CRU space are assessed at a rental rate of \$29, \$27 and \$26 per sq. ft. respectively.

[22] The Complainant disputes the assessed rental rate for each of the CRU space categories and requested the assessed rental rate be reduced to \$25 per sq. ft. for each category.

[23] The Complainant does not dispute the assessed rental rate for the pad space.

**Rental Rates****Complainant's Position**

[24] The Complainant argued that the lease rates for 47% of the space in the subject property were negotiated in 2010 and 2011. The leases were either new leases or renewal leases. It was argued that these leases are good indicators of market rent for the subject in consideration of the amount of space for which the rates were negotiated.

[25] The Complainant provided an excerpt from the Alberta Assessors' Association Valuation

Guide (AAAVG) as follows:

"To determine the current market rent for each tenant, the following guidelines are provided (in order of descending importance):

1. *For most tenants the best source of market rents information is the rent roll. Using these rent rolls, the best evidence of "market" rents are (in order of descending importance):*
  - *Actual leases signed on or around the valuation date.*
  - *Actual leases within the first three years of their term as of the valuation date.*
  - *Current rents for similar types of stores in the same shopping centre.*
  - *Older leases with active overage rent or step-up clauses."*
2. *As a secondary source of rent information, and as a check on the rents derived from the actual rent rolls, the rental rates can be compared to the rents established for similar tenants in other similar properties.*
3. *If comparable information is not available, it may be necessary to analyze the existing lease and interview the owner and tenant(s) to determine what the current rent on the space should be."*

[26] The Complainant stated the subject is an isolated commercial retail centre because there are no other similar centres in close proximity to the subject.

[27] The Complainant argued that therefore, based on the above criteria from AAAVG, the lease rate of the subject property are the best indicators of market rental rates.

[28] The Complainant provided a December, 2010 rent roll and an analysis of the lease rates that commenced in 2009 and 2010 for each CRU category. This analysis shows that the median rate for each category is approximately \$25 per sq. ft... The Complainant argued this analysis supports the request to reduce the assessed rental rate for each category to \$25 per sq. ft.

### **Respondent's Position**

[29] The Respondent provided a May, 2011 rent roll for the subject property and argued this shows that the assessed rental rates are within the range of actual lease rates and asserted the majority of the newer lease rates are renewals and not reliable indicators of market rental rates; new leases are ideal indicators of market rental rates.

[30] The Respondent made reference to Calgary CARB decision 2714-2011-P on the subject property and drew the Board's attention to the reasons for the CARB's decision. The CARB found the Complainant used an incorrect methodology by inter-mixing actual and typical values in the income method and did not accept the Complainant's typical market rates derived from property specific lease rates that appear to be renewals and not new leases. The Respondent asserted the same decision should apply in this case.

### **Board's Reasons**

[31] The Board finds the Complainant's lease rate analysis and argument persuasive to reduce the assessed rental rate for each of the CRU categories. The Board finds the Respondent's May, 2011 rent roll is more relevant than the Complainant's December, 2010 rent roll because

its information is more reflective of the valuation date of July, 2011. The May rent roll shows an additional three leases that were either new leases or renewed leases. These leases are within the CRU category of 1001 to 2,500 sq. ft. with one new rate of \$25 and two new rates of \$26 per sq. ft. which changes the median rate for that category to \$26 per sq. ft.

[32] On reviewing the recent lease rates of the subject, the Board noted that the lease rates clearly do not support the assessed rental rates as indicated by the median rate of \$25, \$26 and \$25.50 per sq. ft. respectively for each of the three categories. There is only one lease rate that is higher than \$29 per sq. ft. and it is for a fast food restaurant situated on the subject pad site.

[33] No comparable lease rates of other similar properties were provided in this case to show how the subject's median rates compare. However, the Board is persuaded by the number of leases that are recently new or renewed and the relative amount of space (twelve of twenty two leases for 47% of the total space). The Board believes this provides a good indication of the market rent for the subject property on the understanding that there is no other similar property close to the subject.

[34] In this case, the Board used the subject's actual lease rates to determine typical rental rates for the subject. No information was provided to show that the other coefficients in the income method should be changed accordingly and no information was provided to persuade the Board that renewal leases should not be used to determine typical rental rates.

[35] The Board was persuaded by its analysis of the May, 2011 rent roll where the median for space category of 1001 to 2,500 sq. ft. is \$26 per sq. ft. and for space category 2,500 to 6,000 sq. ft. is \$25.50 to set the rental at \$26 and \$25 respectively. Also, in recognizing the different rates set by the Respondent for each space category and understanding the concept of "increasing and diminishing returns" the Board set the rental rate for space category 0 to 1,000 sq. ft. at \$27 per sq. ft.

[36] Based on the foregoing and using the Complaint's revised area allocation, the Board determined the revised assessment to be \$11,670,000 (truncated).

**Board's Decision:**

[37] The Board's decision is to change the assessment to \$11,670,000.

DATED AT THE CITY OF CALGARY THIS 15<sup>th</sup> DAY OF November 2012.

  
M. Chillbeck  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Disclosure
2. R1	Respondent's 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 ADMINISTRATIVE USE ONLY**

<b>Decision No. 046-2080-2012-P</b>				<b>Roll No.104144290</b>
<b><u>Subject</u></b>	<b><u>Type</u></b>	<b><u>Issue</u></b>	<b><u>Detail</u></b>	<b><u>Sub-Detail</u></b>
CARB	Retail	Strip Plaza	Income Method	Net market Rate