

**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:

***1163185 Alberta Ltd.,
(Represented by Altus Group Limited),***

COMPLAINANT

And

The City Of Calgary,

RESPONDENT

Before:

***M. Chillibeck, 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: 201464104

LOCATION ADDRESS: 2031 – 33 AV SW

HEARING NUMBER: 68129

ASSESSMENT: \$12,540,000.

[1] This complaint was heard on 11th 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 2077-2012-P) to this hearing which is reiterated below as paragraphs seven to fifteen. This request was agreed to by the Board and the Respondent.

[6] In this case the Complainant requested that the comparable lease rate analysis on page 22 and page 28 of exhibit R1 be excluded. The Respondent objected to excluding page 28 because this is an analysis of the Complainant's comparable lease rate analysis. Pursuant to s.9 (4) MRAC (Matters Relating to Assessment Complaints Regulation) and decision 2077-2012-P, the Board's decision was to exclude page 22, not to exclude page 28 and not hear any evidence related to page 22 of exhibit R1.

Complainant's s.299 and s.300 matter

[7] *“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.*

[8] *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).*

[9] *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.*

[10] *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).

[11] 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.

[12] 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."

[13] 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 21st information sent to the Complainant. The Complainant agreed to have the information entered as an exhibit at this hearing.

[14] 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 21st 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.

[15] 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:

[16] The subject property is a strip retail neighbourhood shopping centre with a building constructed in 2009 situated on 0.78 acres of land. The main floor has retail space, the second floor has office space and the third to sixth floors, assessed under a separate roll number, have residential units.

[17] The subject is classed as a Quality A+ property with a total commercial area of 40,276 square feet (sq. ft.). The total area consists of three categories of CRU (Commercial Retail Unit) space; 0-1000 sq. ft. of 625 sq. ft., 1001-2500 sq. ft. of 1,558 sq. ft., greater than 14,000 sq. ft. of 17,311 sq. ft., bank space of 3,905 sq. ft. and office space of 16,877 sq. ft.

[18] The subject is located at the south east corner of 33 AV and 20 ST in the South Calgary community of SW Calgary. It is surrounded by commercial and residential property. The subject is commonly known as Shoppes of Marda Loop.

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 issues.

1. The assessed rental rate for the CRU space category of 0 to 1,000 sq. ft. and 1,001 to 2,500 sq. ft. is not equitable and should be reduced to \$29 and \$27 per sq. ft. respectively
2. The assessed rental rate for the office space is not equitable and should be reduced to \$22 per sq. ft.

Complainant's Requested Value:

[20] As per disclosure: \$11,080,000.

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 \$35, \$34 and \$17 per sq. ft. respectively.

[22] The office space is assessed at a rental rate of \$28 per sq. ft and the bank space is assessed at a rental rate of \$45 per sq. ft.

[23] The Complainant disputes the assessed rental rate for the CRU space categories of 0 to 1,000 sq. ft. and 1,001 to 2,500 sq. ft. and the office space.

[24] The Complainant does not dispute the assessed rental rate for the bank space and CRU space category greater than 14,000 sq. ft.

CRU Rental Rates

Complainant's Position

[25] The Complainant argued that the subject property is not equitably assessed to two comparable properties, 3550 Garrison WY and 2215 – 33A AV. These comparables are assessed at \$29 and \$27 per sq. ft. for space category 0 to 1,000 sq. ft. and 1,001 to 2,500 sq. ft. respectively. The comparables are located three blocks and one block from the subject property, are similar to the subject and therefore, the subject should be assessed at the same rate as the comparables.

Respondent's Position

[26] The Respondent provided a chart showing lease rates of the subject and the Complainant's two comparables to refute the Complainant's contention that the retail CRU's are not equitably assessed. The chart shows three subject leases range from \$31 to \$48 per sq. ft., seven leases of 3550 Garrison range from \$27 to \$34 per sq. ft. and six leases of 2215 – 33A range from \$20 to \$35 per sq. ft. Also, two ARFI's, April, 2010 and July, 2012, for the subject were provided to support the assessed CRU rates of the subject.

Board's Reasons

[27] The Board finds the Complainant's comparables not sufficiently comparable to the subject property. Although these comparables are close to the subject, they are smaller in size at 16,659 sq. ft. and 14,653 sq. ft. than the subject at 40,276 sq. ft. and lesser in quality at A2 than the subject at quality A+.

[28] The Board is persuaded by the Respondent's lease rates of the comparables and of the subject property which clearly shows there is a difference in rental rates between the comparables and the subject. The Board is not convinced to change the rental rates for the subject retail CRU categories.

Office Rental Rate

Complainant's Position

[29] The Complainant provided a list of thirty lease rate comparables in the "City of Calgary Retail Office Leasing Study" which included six lease rates from the subject property, Shoppes of Marda Loop. The analysis of these lease rates determined the base year median rate to be \$19 and the base year mean rate to be \$21.92 per sq. ft. and the population data median rate to be \$23 and the population mean rate to be \$24.26 per sq. ft. It was argued this supports their request of \$22 per sq. ft.

[30] The lease rate comparables have a lease start range from January, 2009 to May, 2011. Excluding the subject lease rates, the lease start range is from November, 2009 to May, 2011.

[31] The lease rates range from \$16 to \$35.40 per sq. ft. The subject lease rates, included in the analysis, range from \$24 to \$35.40 per sq. ft.

Respondent's Position

[32] The Respondent asserted that the Complainant's office lease rate comparables are of buildings which are not all of the same quality, at A+, as the subject. A chart of the Complainant's lease rates showing lease rate comparables of two A+ buildings of the same quality as the subject was provided together with the subject's six lease rates.

[33] The lease rates range from \$24 to \$35.40 per sq. ft. The subject lease rates, included in the analysis, range from \$24 to \$35.40 per sq. ft. Excluding the subject lease rates, the range is \$30 to \$32 per sq. ft.

[34] The analysis of these lease rates determined the base year median rate to be \$32 and the base year weighted mean rate to be \$31.47 per sq. ft. and the population data median rate to be \$30 and the population weighted mean rate to be \$30.06 per sq. ft. It was argued this supports the assessed rate of \$28 per sq. ft.

[35] The lease rate comparables have a lease start range from September, 2009 to February, 2011. Excluding the subject lease rates, the lease start range is from May, 2010 to February, 2011.

Board's Reasons


[36] The Board is not convinced to change the office rental rate as requested by the Complainant. The Board finds the Complainant's lease rate comparables include leases from buildings of a different quality than the subject and are located a significant distance from the subject. By excluding the quality A+ lease rates from the chart of thirty lease rates, the range in lease rates is \$14.50 to \$22 per sq. ft. This clearly shows that the non A+ buildings are of a lesser quality than the subject and therefore not sufficiently similar to the subject property.

[37] The Board is persuaded by the Respondent's analysis of the quality A+ lease rates, at a base year median of \$32, which clearly supports the assessed rental rate for the subject at \$28 per sq. ft. The Board also finds the subject's lease rates which range from \$24 to \$35.40 per sq. ft. to be within the overall range of rates and the nine lease rate comparables, which range from \$30 to \$32 per sq. ft., this supports the assessed rental rate.

Board's Decision:

[38] The Board's decision is to confirm the assessment to \$12,540,000.

DATED AT THE CITY OF CALGARY THIS 5th DAY OF November 2012.



for M. Chilibeck
Presiding Officer

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

NO.	ITEM
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.*

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Decision No. 046-2082-2012-P			Roll No.201464104	
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Sub-Detail</u>
CARB	-Retail	Strip Plaza	Income Method	Net Market Rate
	-Office	Strip Plaza	Income method	Net market Rent