

**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:

**2675-36TH Street N.E. GP Inc.
(as represented by Altus Group Limited), COMPLAINANT**

and

The City of Calgary, RESPONDENT

before:

**J. Dawson, PRESIDING OFFICER
A. Blake, MEMBER
H. Ang, 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:	049002934
LOCATION ADDRESS:	2675 36 Street NE
LEGAL DESCRIPTION:	Plan 8110296; Block 2
HEARING NUMBER:	68823
ASSESSMENT:	\$ 10,150,000

- [1] This complaint was heard on the 13 day of November, 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:
- K. Fong Agent, Altus Group Limited
- [3] Appeared on behalf of the Respondent:
- C. Neal Assessor, City of Calgary

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

Preliminary Issue 1 - Electronic Evidence:

- [4] As permitted by the Board, the parties routinely exchange evidence via electronic means – such as email. The Board is included in these exchanges to ensure proper disclosure deadlines and procedures are adhered to.
- [5] In one instance, the Complainant sent a document via email on November 5, 2012 at 4:35 PM with both the Respondent and the Board receiving identical submissions. Some of the evidence was intentionally blocked out by the Complainant as it was not intended to be disclosed. The Board clerk printed the evidence as received with the information blocked out. The Respondent printed the same document and there was no blocked out portions, nor was the Respondent aware there was an intention to block portions of the disclosure.
- [6] The issue before the Board is; which evidence is properly before the CARB?
- [7] On the first question the Board considered the Electronics Transactions Act, the Alberta Evidence Act and Municipal Government Act [*the Act*]. *The Act* states in section 464(1) that the Board is not bound by the rules of evidence (including the Alberta Evidence Act); however, when considering if evidence should be accepted or not, the Board certainly will give consideration to the Alberta Evidence Act as a guideline unless policy dictates otherwise.
- [8] Within the Alberta Evidence Act in section 41.6 is guidance for the Board to consider; *“For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in respect of any standard, procedure, usage or practice on how electronic records are to be recorded or stored, having regard to the type of business or endeavour that used, recorded or stored the electronic record and the nature and purpose of the electronic record.”*
- [9] The Board reviewed ARB policy and did not find any standard, procedure, or practice regarding electronic evidence; therefore, the Board made a decision based on fairness and common sense. Fairness dictates that – the evidence intended to be disclosed is what should be disclosed. However, common sense dictates that – once evidence is disclosed it cannot be undisclosed.
- [10] **The Board cannot retract evidence that has been properly disclosed regardless if the disclosure was non-intentional. The evidence disclosed to the Respondent is valid in the**

manner they received it; however, so is the evidence disclosed to the Board. The CARB, without a policy advising otherwise, does not and will not alter any evidence it receives; therefore, the Board will rely on and make a decision with the evidence printed by the clerk.

- [11] No additional preliminary, procedural, or jurisdictional matters were identified.

SECTION B: Issues of Merit

Property Description:

- [12] Constructed in 1984, the subject – 2675 36 Street NE, is a five-storey suburban medical/dental office building located at the corner of 36 Street and 26 Avenue NE in the community of Sunridge.
- [13] The Respondent prepared the assessment on the income approach showing 110,658 square feet graded as an 'A' quality: 1) 71,157 square feet of medical/dental office space; 2) 13,348 square feet of office space below grade; 3) 1,885 square feet of storage; and 4) 24,268 square feet of theatre space. The site has an area of 152,422 square feet.
- [14] A separate assessment is associated with this property representing a value of \$8,259,000. The space associated with this separate assessment is exempt from taxation and is not before the Board. Therefore, only the non-exempt area is under complaint.

Matters and Issues:

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

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

- [16] 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 market rental rate for the medical/dental office space?*

Complainant's Requested Value:

On complaint form:	\$8,230,000
Within disclosure:	\$9,660,000

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

Matter #3 - an assessment amount

Question 1 What is the correct market rental rate for the medical/dental office space?***Complainant's position***

- [17] The Complainant indicated that the subject is experiencing a significant increase in vacancy that is resulting in lower rents with free rental as incentives. There are six leases within the subject that demonstrate a median of \$17.22 per square foot and a weighted mean of \$16.85 per square foot. (C1 p. 2)
- [18] The Complainant reviewed the details of the subject, including; 2012 Property Assessment Notice, map, photos, and Non-Residential Properties – Income Approach Valuation report. (C1 pp. 5-23)
- [19] The Complainant provided rent roll information to demonstrate on April 1, 2010 vacancy was at 3% (3,303/108,989 square feet) and is at 27% (29,277/110,003 square feet) as of December 20, 2011. (C1 pp. 26-27)
- [20] The Complainant showed a chart with six leases signed between June 1, 2010 and December 1, 2010. Three of the six leases included a free rental period deriving a median of \$17.22 per square foot and a weighted mean of \$16.85 per square foot. Additional rent roll information is included as of December 20, 2011 to support the chart. (C1 pp. 28-32)
- [21] The Complainant included past Board decisions to show how similar circumstances were decided by the Board. The decisions, *CARB 2166/2010-P* and *ARB 0799/2010-P*, are based on removing tenant improvements from lease rates to find the net value to the landlord. These decisions are argued to be relevant in that the free rent should also be deducted to find the net value to the landlord. (C1 pp. 33-43)
- [22] The Complainant reviewed a page, provided by the Respondent as instruction for completing their Assessment Request for Information [*ARFI*] forms, to show the net rent includes deductions for rent concessions – including free rent. (C1 p. 44)
- [23] The Complainant concluded with their request for an assessment of \$9,660,000. (C1 pp. 47-48)

Respondent's position

- [24] The Respondent indicated that their analysis supports the assessed market rental rate of \$18 per square foot for the medical/dental office and the subject lease information – when excluded subject leases are included – support the assessment. (R1 p. 3)
- [25] The Respondent reviewed the subject details; 2012 Property Assessment Notice, Non-Residential Properties – Income Approach Valuation, maps, and leasing advertisement. (R1 pp. 5-10)
- [26] The Respondent provided rental rate analysis charts showing new leases from June 1, 2010 through December 1, 2010 that derive a mean of \$18.70 per square foot and a weighted mean of \$18.55 per square foot. The same chart narrowed to July 1, 2010 through December 1, 2010 and removing a below grade tenant results in a mean of \$18 per square foot and a weighted mean of \$17.46 per square foot (calculated during hearing). A *post facto* lease supplied of \$19

per square foot signed August 1, 2011 is an indicator of the trend. (R1 p. 12)

- [27] The Respondent supplied the 2011 *ARFI* for the subject property to support the Respondent's analysis and to show the vacancy near valuation date at 4.1% (4,330/105,605 square feet). (R1 pp. 13-26)
- [28] The Respondent concluded with a statement that the assessment of the subject is correct, fair and equitable. (R1 p. 28)

Complainant's rebuttal position

- [29] The Complainant argued that leasing information used by the Respondent is erroneous; one lease used a step-up rate versus the initial rent, a second lease is for basement space that is not within the stratification under review, and a third lease is an outlier and should be excluded. Supporting information and examples of similar circumstance are included. (C2 pp. 2-12)
- [30] The Complainant corrected the chart originally created by the Respondent to show a mean of \$17.71 per square foot and a weighted mean of \$16.91 per square foot for subject leases during the valuation period. (C2 pp. 14-15)

Board's findings

- [31] The Board is not persuaded by the evidence provided by the Complainant. The rebuttal document shows a mean of \$17.71 per square foot and a weighted mean of \$16.91 per square foot for subject leases and ignores the median of \$17.79 per square foot (\$18 per square foot adjusted for one month free rent). Additionally, the *ARFI* indicates rents support the assessment and in some cases greater than assessed. The Complainant wishes to use subject leases for the one stratification and use typical for a stratification whereby the actual lease is more than two times the assessment – \$19 per square foot for basement space that is assessed at \$8 per square foot.
- [32] The Board does not support the mixing of actual and typical data. The use of all typical or all actual data (when sufficiently available) will derive the correct assessment.

Matter #4 - an assessment class

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

Board's Decision:

[34]

After considering all the evidence and argument before the Board it is determined that the subject's assessment is correct at a value of \$10,150,000 which reflects market value and is fair and equitable.

DATED AT THE CITY OF CALGARY THIS 28th DAY OF December 2012.


J. Dawson
Presiding Officer

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

NO.	ITEM
1.	C1 Complainant Disclosure – 48 pages
2.	R1 Respondent Disclosure – 40 pages
3.	C2 Rebuttal Disclosure – 16 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.*

APPENDIX "B"**LEGISLATION****The Municipal Government Act [the Act]**

Chapter M-26, Section 460, Revised Statutes of Alberta 2000

Interpretation**Proceedings before assessment review board**

- 464(1)** *Assessment review boards are not bound by the rules of evidence or any other law applicable to court proceedings and have power to determine the admissibility, relevance and weight of any evidence.*

Alberta Evidence Act

Revised Statutes of Alberta 2000, Chapter A-18, Current as of November 1, 2010

Standards

- 41.6** *For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in respect of any standard, procedure, usage or practice on how electronic records are to be recorded or stored, having regard to the type of business or endeavour that used, recorded or stored the electronic record and the nature and purpose of the electronic record.*

2001 cE-5.5 s33

Municipal Government Board use only: Decision Identifier Codes

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Medical/Dental Office	High Rise	Income Approach	Market Rental Rate