

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:

1022224 Alberta Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
R. Deschaine, BOARD MEMBER
B. Jerchel, BOARD 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 2013 Assessment Roll as follows:

ROLL NUMBER:	757119904
LOCATION ADDRESS:	51 Sunpark Drive SE
FILE NUMBER:	73160
ASSESSMENT:	\$7,870,000

This complaint was heard on 16th day of September, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- M. Cameron
- J. Weber

Appeared on behalf of the Respondent:

- M. Ryan
- L. Dunbar-Proctor

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

- [1] The Board notes the file includes a completed copy of the Assessment Review Board Complaint form and an Assessment Complaints Agent Authorization form.
- [2] Neither party objected to the members of the Board, as introduced, hearing the evidence and making a decision regarding this assessment complaint.

Preliminary Issues:

- [3] At the commencement of the hearing, the Complainant stated that the Respondent's evidence package was disclosed late, and asked that the Board not consider the Respondent's evidence. The Respondent acknowledged that the evidence package was provided after the disclosure period, apparently due to a clerical error.
- [4] The Board notes Section 8(2) of Matters Related to Assessment Complaints Regulation (MRAC) sets out the disclosure requirements for a complaint before a Composite Assessment Review Board. Section 9(2) of MRAC states that "...the Board must not hear any evidence that has not been disclosed in accordance with section 8." The direction offered in Section 9(2) is clear, and does not allow for any discretion to be applied by the Board. The Respondent acknowledges that their evidence was not disclosed within the time prescribed by Section 8(2) of MRAC. The Board concluded that the Respondent's evidence will not be considered by the Board. The Respondent may question the evidence presented by the Complainant and may present a closing statement. This was agreeable to both parties. The hearing proceeded on this basis.

Property Description:

- [5] The subject property is a multi-tenant low-rise medical/dental office building located in a commercial/office development southeast of Sun Valley Blvd. and Macleod Trail, in the Sundance District. The building was constructed in 2005 and consists of 27,520 square feet (SF) of rentable area on three floors with 24 underground parking stalls, according to its 2013 Property Assessment Detail Report. The property is assessed as an A+ quality building, using a rental rate of \$22/SF, a 15% vacancy allowance, and capitalization rate of 6% to arrive at the 2013 Assessment of \$7,870,000.

Issues:

- [6] The parties presented evidence on a number of topics. This Decision will address only the evidence and argument the Board considers relevant to the issues. The Complainant disputed the quantum of the 2013 assessment. The following issue was raised.

1. What is the correct rental rate for assessment purposes?

In argument, the Respondent raised an objection to the Board changing an assessment if that change results in less than a 5% difference from the assessed value. The Board will address the following objection.

2. Should the Board change an assessment if the change results in less than a 5% difference?

Complainant's Requested Value: \$7,490,000

Board's Decision:

- [7] The Board reduces the 2013 Assessment to \$7,490,000.

Legislative Authority:

- [8] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as the amount that a property, as defined in Section 284(1)(r) of the Act might be expected to realize if it is sold on the open market by a willing seller to a willing buyer. Section 467(3) of the Act states that an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations. The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

Issue 1: What is the correct rental rate for assessment purposes?**Complainant's Position:**

- [9] The Complainant's position is that the rental rate applied to the subject property for the 2013 assessment of \$22/SF does not reflect the market value of the property.
- [10] The Complainant presented the lease data apparently used by the City to derive its \$22/SF rental rate for SE Suburban Medical/Dental A Quality Office properties on page 25, Exhibit C1. This dataset consists of three leases, all from 2011, at per square foot rates of \$22, \$21 and \$20. The Complainant argued that it is not appropriate to select the highest value in the dataset as the "typical" rent rate for this class of buildings, and that the median or mean, at \$21/SF is more reflective of the typical rent rate.
- [11] Applying a rent rate of \$21/SF to the assessment calculation, the result is the requested assessment of \$7,490,000.

Respondent's Position:

- [12] The Respondent presented no evidence or argument on this point.

Findings of the Board on this Issue

- [13] The Board acknowledges the limited leasing data. The Board understands that a "typical" rental rate is better reflected using a median, mean or weighted average of the data set, unless there are extenuating circumstances or reasons to use the highest rate in a range. However, applying statistical tests to only three data points also has its weaknesses. No reasons were provided to indicate why the highest value in the dataset is "typical". The Board concludes that given the three lease comparables, \$21/SF reflects the rental rate for the subject property. Applying this rental rate to the income approach calculation used to prepare the 2013 assessment, the Board calculates the assessment at \$7,490,000.

ISSUE 2: Should the Board change an assessment if the change results in less than a 5% difference?**Complainant's Position:**

- [14] The Complainant did not offer any argument on this issue.

Respondent's Position:

- [15] The Respondent raised this issue in its Closing Statement. The Respondent presented MGB Order 101/09 and highlighted a paragraph on page 16 of 23 that discusses the Bentall Retail Services et al v. Assessor of Area No. 9 – Vancouver 2006 BCSC425 decision (Bentall Decision). It is the Respondent's position that the Bentall decision indicates that any assessed value within 5% of the assessment is acceptable and should not be varied by the Board.
- [16] The Respondent also presented ARB Decision 0759/2010-P, CARB Decision 2386/2011-P and CARB Decision 1401/2012-P to support its contention that there is Board precedent that they do not vary an assessment if the change results in a difference of less than 5%.

Findings of the Board on this Issue

- [17] The Board notes that Section 2 of Matters Relating to Assessment and Taxation Regulation (MRAT) defines the standard of the assessment process stating that "An assessment of property based on market value ... must be prepared using mass appraisal ... must be an estimate of the value of the fee simple estate in the property, and ... must reflect typical market conditions for properties similar to that property." The Board is further directed by Section 467(3) of the MGA which states that "An assessment review board must not alter any assessment that is fair and equitable, taking into consideration ... the valuation standard ... the procedures set out in regulations ... and assessment of similar properties ... in the same municipality". The Board understands this to mean that the Board is required to review complaints in light of the assessment standard in MRAT to ensure that the assessed value reflects, as accurately as possible based on the evidence presented, the fee simple market value of the assessed property.
- [18] The Board is familiar with the Bentall Decision and notes that the reference made by the Respondent is from clause [96], which reads:

"[96] The Respondent has provided me with summaries of 27 previous Board Decisions dealing with the question of range of values. While there have been some exceptions, the vast majority of these cases suggest an appropriate range of plus or minus 5% of assessed value as being within an acceptable range of actual value."

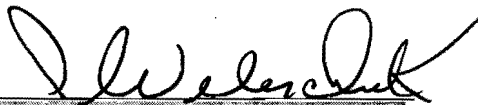
The Board understands this clause to be describing evidence presented and not a decision or direction of the court. That said, clause 99 of the Bentall decision references equity and indicates that the actual value need only be within the range of values for similar properties to be equitable. This concept of "range of value" and "actual value" is further discussed in the Decision, but nowhere in that Decision is the conclusion that 5% is the acceptable tolerance between actual and assessed value.

- [19] Neither the MGA or its Regulations, nor the Bentall Decision give the Board direction to not altering an assessment simply because that change would results in a difference of less than 5%. In situations where the Board determines that the assessed value is not fair and equitable, in other words does not reflect the fee simple market value of the property under complaint, the Board is authorized to alter the assessment.
- [20] As discussed above, the Board concludes that the assessed value of the subject property is \$7,490,000 and alters the assessment accordingly. Whether this change is more or less than 5% is of no consideration.

Board's Reasons for Its Decision

- [21] The Board concludes that the 2013 assessment should be reduced to \$7,490,000, based on its conclusion that the appropriate rental rate for the subject property is \$21/SF.

DATED AT THE CITY OF CALGARY THIS 3rd DAY OF October 2013.



Ivan Weleschuk
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:****NO.****ITEM**

1. C1

Complainant 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 MGB Administrative Use Only

Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Office	Low rise Medical/Dental	Rental rate	Altering an assessment