



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:

Albert Bell Management Services Ltd. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***S. Barry, PRESIDING OFFICER
A. Huskinson, BOARD MEMBER
J. Rankin, BOARD MEMBER***

This is a complaint to the Calgary Composite Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	730063203
LOCATION ADDRESS:	8 MCKENZIE TOWNE AV SE
FILE NUMBER:	75673
ASSESSMENT:	\$2,190,000

This complaint was heard on the 28th day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *A. Izard, Agent, Altus Group*
- *D. Main, Agent, Altus Group*

Appeared on behalf of the Respondent:

- *J. Yeung, Assessor, City of Calgary*
- *T. Johnson, Assessor, City of Calgary*

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

[1] The Complainant advised that there was an issue with respect to the Respondent's change in approach to value and request for an increase in assessment. He asked that this be dealt with as a preliminary matter at the outset of the hearing. The Board noted that the matter in question was contained within the Respondent's disclosure document R1 and that the Complainant had submitted a Rebuttal document to that disclosure dealing with the matter. Accordingly, the Board ruled that the issue would be dealt with when the Respondent's disclosure and the Complainant's Rebuttal were put into evidence within the normal course of the hearing.

Property Description:

[2] The property in question is a convenience store [Commercial Retail Unit (CRU)] space of 3,920 square feet (sq.ft) and adjacent gas bar, both located on a titled 48,224 sq.ft. parcel lying within the larger McKenzie Towne Centre. It is situated within the McKenzie Towne community at the intersection of McKenzie Towne Blvd SE and McKenzie Towne Av SE. It was constructed in 2000, and has been assessed using the Income approach to value applying an annual rental rate of \$30 per sq.ft. for the convenience store and \$45,000 for the gas bar. The land use designation is Direct Control and the sub-property use is coded CM1402 Retail – Shopping Centres – Community. As a CRU unit, it falls within the size classification, for rental rate purposes, of 2,501-6,000 sq.ft..

Issues:

[3] Would a rental rate of \$25 per sq.ft. on the CRU space produce a more fair and equitable assessment?

Complainant's Requested Value:

[4] On the Complaint form, the requested assessment was \$1,710,000. At the time of the hearing, the Complainant had revised the request to \$1,920,000 based on a rental rate of \$25 per sq.ft. for the CRU space.

Board's Decision:

[5] That the rental rate for the CRU space be reduced to \$25 per sq.ft. and, as a consequence, that the 2014 assessment be reduced to \$1,920,000.

Legislative Authority, Requirements and Considerations:

[6] A Composite Assessment Review Board (CARB) derives its authority from the *Act*, section 460.1, which reads as follows:

- (2) Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

Section 293 of the *Act* requires that:

- (1) In preparing an assessment, the assessor must, in a fair and equitable manner,
 - (a) apply the valuation and other standards set out in the regulations, and
 - (b) follow the procedures set out in the regulations.

Sections 2 and 4 of the Matters Relating to Assessment and Taxation Regulations (*MRAT*) state:

- (2) An assessment of property based on market value
 - (a) must be prepared using mass appraisal,
 - (b) must be an estimate of the value of the fee simple estate in the property, and
 - (c) must reflect typical market conditions for properties similar to that property.
- 4(1) The valuation standard for a parcel of land is
 - (a) market value, or
 - (b) if the parcel is used for farming operations, agricultural use value.

Position of the Parties**Complainant's Position:**

[7] The Complainant produced assessment information for another CRU property within McKenzie Towne Centre that had the same size range category as the subject of 2,501-6,000 sq.ft.. The Assessor had applied a rental rate of \$25 per sq.ft. to this property.

[8] The Complainant also produced a 2014 CRU Rental Rate Analysis that listed 8 premises, all within the SE quadrant of the City and all within the relevant size range, which had rental rates ranging from \$16.50 per sq.ft. to \$45 per sq.ft.. This analysis demonstrated a mean rental rate of \$27.13 per sq.ft. and a median of \$25 per sq.ft..

[9] The CRU Rental Rate Analysis data was based on the Assessor's response to a request by the Complainant pursuant to s.299 of the *Act*.

[10] The Complainant argued that equity dictated that the subject CRU rental rate should be reduced to \$25 per sq.ft..

[11] In Rebuttal, the Complainant provided lengthy argument to the effect that there could be

no change in assessment methodology or assessment amount after the Complaint had been filed and cited *Canadian Natural Resources Limited v Wood Buffalo (Regional Municipality)*, 2014 ABCA 195. (CNRL). The arguments are not detailed here and the reader is referred, instead, to the Board's Findings and Reasons for Decision, below.

Respondent's Position:

[12] It was the Respondent's position that the property was incorrectly assessed using the Income approach to value because the development is situated on its own parcel; It does not form part of the larger parcel that contains the shopping centre.

[13] The Respondent stated that gas bars with convenience stores on their own parcels are coded, for assessment purposes as CM0711 – Vehicle/Accessories – Convenience Store Gas Bar rather than CM1402, as is the subject. Further, the CM0711 coded gas bars are assessed using the Cost approach to value rather than the Income approach.

[14] The Respondent stated that because the property was wrongly assessed, there would be no defence of the Income approach or the Complainant's request for a reduction in rental rate.

[15] It was noted through questioning that the property had been assessed using the Income approach for the last 12 to 13 years and that, until the Respondent's R1 on this Complaint had been disclosed, the Complainant was unaware that there had been a change in coding or assessment methodology.

[16] The Respondent's oral submission was that the assessment should be based on the Cost approach and the assessment increased to \$2,390,520 in defence of which he provided an Assessment Explanation Supplement but no Marshall and Swift work sheets to explain how that 2014 assessment was derived. It was noted that the R1 disclosure gave notice of intent but no request to increase the assessment.

[17] The Respondent further advised that, no matter what decision the Board made, the Respondent would issue a Revised Notice of Assessment for 2014 pursuant to ss. 305(1) and 305(5) of the Act because "an error has been discovered in the information used to arrive at the current assessment . . .".

Board's Findings and Reasons for Decision:

[18] The 2014 assessment was based on the Income approach to value and the Complainant's challenge was to only one of the parameters in that calculation; specifically, the CRU rental rate. The Complainant provided support for his request for a reduction. The Respondent did not challenge or dispute the requested rental rate, nor did he present evidence to support the Cost approach. Accordingly, the Board reduced the assessment.

[19] Given the fact situation, the Board found no reason to address the issues raised by CNRL or other citations in the C2 Rebuttal document.

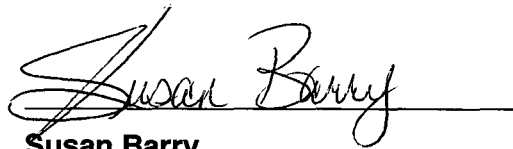
[20] The Board found the Respondent's position that the property would be re-assessed no matter what the outcome of the hearing to be disrespectful of the Board, the Complaint process, the Complainant and possibly even the legislation.

[21] Section 305 of the Act does allow for the correction of the roll and the issuing of an amended assessment if there is an error, etcetera, on the roll. (emphasis added). It seems to

this Board, however, that the Assessor's internal coding is part of a process or model and not a part of the roll itself. This coding does not appear on the Notice of Assessment, the contents of which are prescribed in s.309(1) of the Act which states, in part, that the "assessment notice must show . . . the same information that is required to be shown on the assessment roll;". Either the assessment notice is deficient or the coding does not form part of the roll.

[22] The Respondent, of course, is free to choose the methodology that, in his opinion results in the best estimate of market value. The Complainant is likewise free to challenge that methodology and, at some point, a Board or the Courts will make a decision. However, for the Respondent to switch horses in mid-stream, so to speak, more than halfway through the year, to redress a long-standing error of his own making does not, in our opinion, serve the best interests of the taxpayer community.

DATED AT THE CITY OF CALGARY THIS 14th DAY OF August 2014.

A handwritten signature in cursive script, reading "Susan Barry", written over a horizontal line.

Susan Barry
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. R1	Respondent 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 Purposes Only

Municipality	Roll Number	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary	730063203	Retail	Stand Alone	Income	Cost Re-assessment