



ASSESSMENT REVIEW BOARD

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NOTICE OF DECISION NO. 0098 68/10

ALTUS GROUP LTD
17327 - 106A AVENUE
EDMONTON, AB T5S 1M7

THE CITY OF EDMONTON
ASSESSMENT AND TAXATION BRANCH
600 CHANCERY HALL
3 SIR WINSTON CHURCHILL SQUARE
EDMONTON, AB T5J 2C3

This is a decision of the Assessment Review Board (ARB) from a hearing held on July 13, 2010 respecting an appeal respecting a template for:

Roll Number 3194149	Municipal Address 12703 97 STREET NW	Legal Description 15 – 22/8/3907AH
Assessed Value 1,113,500	Assessment Type Annual New	Assessment Notice for 2010

Before:

Lillian Lundgren, Presiding Officer
Petra Hagemann, Board Member
Howard Worrell, Board Member

Persons Appearing: Complainant

Anthony Patenaude, Altus Group Ltd

Persons Appearing: Respondent

Chris Rumsey, Assessment and Taxation Branch
Tanya Smith, Law Branch

A. PRELIMINARY MATTER – REQUEST TO EXCLUDE THE RESPONDENT’S SALES COMPARABLES

Issue:

Should the Respondent’s two sales comparables be excluded under section 9(4) of MRAC?

- a) Does the composite assessment review board have the jurisdiction to hear this matter?
- b) Is the 299(1) request for information clear?
- c) Is the municipality required to provide all of the sales used in the valuation model?
- d) Is the municipality required to disclose possible sales comparables in a 299(1) response?

POSITION OF THE COMPLAINANT

The Complainant requests that the two sales comparables used by the Respondent be excluded from the evidence because they were not included in the list of title transfers sent to the Complainant in the response to the Complainant’s request under section 299 of the *Municipal Government Act* (MGA). The Complainant argues that a composite assessment review board must not hear any evidence from a municipality that was not provided under section 299 of the Act. The *Matters Relating to Assessment Complaints Regulation* (MRAC), AR 310/2009 states in section 9(4) of failure to disclose:

“A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant.”

The Complainant’s copy of the Request for Assessment Information form dated January 8, 2010 showed the roll number and legal description of the property under complaint. The Complainant explained that it expected to receive all of the sales used to prepare the 2010 assessment for this type of property. The Complainant also expected to receive the sales comparables the Respondent would use if a complaint was filed.

On February 5, 2010 the Complainant received a list of approximately 350 title transfers of commercial property which transferred from July 2006 to June 2009, and the two sales comparables are not on that list. Soon after receiving the list of title transfers, the Complainant realized that the list didn’t include all of the sales transactions which occurred in that time frame because the Complainant found additional sales on the Gettel website.

On March 5, 2010 the Assessment Review Board complaint was filed. The Complainant advised the Board that all of the evidence was disclosed according to the timelines set out in MRAC, section 8. The Complainant confirms that it received the Respondent’s documentary evidence, including the two sales comparables, at least 14 days before the hearing date.

In answer to a question, the Complainant stated that it was prejudiced by not receiving all of the sales because the analysts at Altus require them, and the case was prepared based on the response.

In conclusion, the Complainant submitted that the composite assessment review board must not hear the Respondent's sales comparables because they were not provided in the section 299(1) response.

POSITION OF THE RESPONDENT

The Respondent is challenging the Board's jurisdiction to hear a complaint about a section 299(1) matter because it is not referred to in section 460(5) of the Act. The Respondent referenced section 467(1) of the Act which states:

467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

And section 460(5) which states:

460(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

- (a) the description of a property or business;*
- (b) the name and mailing address of an assessed person or taxpayer;*
- (c) an assessment;*
- (d) an assessment class;*
- (e) an assessment sub-class;*
- (f) the type of property;*
- (g) the type of improvement;*
- (h) school support;*
- (i) whether the property is assessable;*
- (j) whether the property or business is exempt from taxation under Part 10.*

Since a section 299(1) request is not included in the above list of matters, the composite assessment review board cannot hear it.

The Respondent asserts that the assessed person should make a request to the Minister under section 27.6 of the *Matters Relating to Assessment and Taxation Regulation* (MRAT), Alta. Reg. 220/2004, if the assessed person believes that the City of Edmonton has failed to comply with the request under section 299(1).

With respect to the request of the Complainant to exclude the two sales comparables used by the Respondent, the Respondent is opposed to the request. The Respondent argues that the City is not required to provide any sales in response to a section 299(1) request for information.

Section 299(1.1) sets out the information that must be provided:

299(1) An assessed person may ask the municipality, in the manner required by the municipality, to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.

(1.1) For the purposes of subsection (1), "sufficient information" in respect of a person's property must include

- (a) all documents, records and other information in respect of that property that the assessor has in the assessor's possession or under the assessor's control,*
- (b) the key factors, components and variables of the valuation model applied in preparing the assessment of the property, and*
- (c) any other information prescribed or otherwise described in the regulations."*

The MRAT provides additional guidance with respect to the section 299 requirements:

27.3(1) For the purposes of sections 299(1.1)(b) and 300(1.1)(d) of the Act, the key factors and variables of the valuation model applied in preparing the assessment of a property include

- (a) descriptors and codes for variables used in the valuation model,*
- (b) where there is a range of descriptors or codes for a variable, the range and what descriptor and code was applied to the property, and*
- (c) any adjustments that were made outside the value of the variables used in the valuation model that affect the assessment of the property.*

27.1 In this Part,

- (b) "factor" means a property characteristic that contributes to a value of a property.*

It is the City's position that the above legislation does not require the City to provide any sales information. The City is only obligated to provide the sales comparables in the disclosure package after a complaint has been filed.

The Respondent states that the list of over 350 title transfers is posted on the City website, and it is this same list of title transfers that is sent to every assessed person who makes a request for information under section 299(1). It is provided as a courtesy, and the legislation does not require that it be provided.

In answer to questions the Respondent stated that not all of the sales in the list of title transfers were used in the valuation model. Approximately 102 sales were used in the valuation model, however, it is the Respondent's position that it is not required to provide a list of all the sales used in the mass appraisal process. The Respondent submits that the complaint is on an individual property and not the entire valuation model.

The Respondent further explained that the sales must be validated before they are used in the valuation model and many of the properties which transfer are not typical transactions in the market place. For example, many title transfers are non-arms length or transferred for nominal values and should not be used because they do not reflect market value.

DECISION

The request to exclude the Respondent's sales comparables is denied.

REASONS

Issue: Should the Respondent's two sales comparables be excluded under section 9(4) of MRAC?

- a) Does the composite assessment review board have the jurisdiction to hear this matter?

In determining the Board's jurisdiction in this matter, the Board reviewed section 299(1) of the Act. The access to assessment record is a section of the Act intended to lend transparency to the preparation of the assessment of an "assessed" person's property. An assessed person may, at any time after he receives his assessment notice request information under section 299(1). Section 299(1) is independent of the complaint process, because at this point in time a complaint has not been filed and may not ever be filed.

The Board agrees with the Respondent's position, up to this point only. The Board does not have jurisdiction to determine whether the municipality complied with the assessed person's request under section 299(1) because there is no complaint before the Board. Section 27.6(1) of MRAT provides a remedy to the assessed person who believes that the response to the 299(1) request was insufficient. In this particular case, Altus the agent for the assessed person, made a 299(1) request on January 8, 2010 and received the response from the municipality on February 5, 2010. At this point in time no complaint had been filed with the Assessment Review Board, therefore, the proper recourse for Altus on behalf of the assessed person was to make a request to the Minister for a compliance review under section 27.6(1) of MRAT. Altus did not make a request to the Minister. As well, Altus on behalf of the assessed person could have contacted the Assessment Department about the response, which it did not.

Once the complaint was filed on March 5, 2010, Altus on behalf of the assessed person became a Complainant, and the complaint was properly in front of the composite assessment review board. The Board has the jurisdiction to hear this matter under section 9(4) of MRAC. Section 9(4) is part of the MRAC legislation which deals with hearings before the composite assessment review board and is squarely within the jurisdiction of the Board.

Section 9(4) failure to disclose states: "A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a Complainant under section 299 or 300 of the Act but was not provided to the Complainant. In the CARB's view, applying this provision requires the CARB to consider what information was requested under section 299 that was not provided.

The Board also finds that it has jurisdiction to hear this preliminary matter because it relates to the matter of an assessment as per section 460(5) (c). The Complainant is requesting the Board to exclude the Respondent's sales comparables and sales comparables are an essential consideration in determining whether an assessment reflects market value.

- b. Is the 299(1) request for information clear?

The Board finds the request on the Request for Assessment Information form unclear. There was no request for sales used in the valuation model, nor was there any request for potential sales comparables should a complaint be filed. The only information on the form is the legal description of the subject property. Although the Complainant stated it was its expectation that all sales used in the valuation model would be provided, this request was not indicated on the form. The Respondent municipality, could not reasonably have known what information was requested, or in this case, what information was expected.

c. Is the municipality required to provide all of the sales used in the valuation model?

In determining this matter, the Board reviewed section 299(1) of the Act which sets out what “sufficient information” in respect of a person’s property must include. The Board finds that all the sales, including the two at issue, are not information in respect of the subject property or information needed to show how the assessor prepared the subject’s assessment. Nor are all the sales in the model or the two sales at issue, considered to be “key factors” or “components and variables of the valuation model.” To assist in understanding what is meant in section 299(1.1) the Board reviewed the definitions of “factor” and “variable” in section 27.1 of MRAT. Factor means a property characteristic that contributes to a value of a property. Variable means a qualitative or quantitative representation of a property characteristic used in a valuation model. Clearly, the definitions of factor and variable do not include the list of sales that the Complainant expected to receive in the 299(1) response. The Board has reviewed section 299(1) of the Act and sections 27.1 and 27.3 of MRAT, and the information that is required to be provided in these sections does not include sales information. In conclusion, the Board agrees with the Respondent municipality that the municipality is not required by legislation to provide all of the sales used in the valuation model. If the legislation has intended such a broad response to a 299(1) request, it could have said so.

d. Is the municipality required to disclose possible sales comparables in a 299(1) response?

After the assessed person received the response to the 299 (1.1) request from the municipality it could have made a request to the Minister for a compliance review under section 27.6 of MRAT. It chose not to make a request of the Minister.

The Board finds that it is unreasonable to expect the municipality to identify and disclose potential sales comparables in case a complaint is filed. After a complaint is filed, the Respondent municipality must, as it did, disclose its sales comparables in compliance with section 8(2)(b)(i) of MRAC. In conclusion, the Board denies the request of the Complainant to exclude the Respondent’s sales comparables because the municipality was not required by legislation to disclose them at the time of the 299(1) response.

Finally, there was no prejudice to the Complainant in as much as he did receive the sales comparables during the course of the complaint process, and the Complainant was not entitled to them in the 299 (1) response.

B. PRELIMINARY MATTER – REQUEST TO EXCLUDE THE COMPLAINANT’S REBUTTAL EVIDENCE

During the course of the hearing, the Complainant was about to present its rebuttal evidence and the Respondent raised an objection.

POSITION OF THE COMPLAINANT

The Complainant’s rebuttal evidence consisted of the list of title transfers that it received in response to the section 299(1) request. The Complainant sorted the list into four groups: Chinatown, Downtown, University, and Suburban. Suburban properties were separated into two sub-groups: arterial exposure and non-arterial exposure. The Complainant intended to use the sub-group of suburban non-arterial to show that the Respondent’s sales comparables were not from the sub-group of suburban non-arterial properties. The Complainant intended to use the sub-group of properties to rebut the Respondent’s use of properties. The Complainant was not introducing these properties as additional sales comparables.

POSITION OF THE RESPONDENT

The Respondent objected to the rebuttal evidence because it was not evidence to rebut the Respondent’s disclosure in accordance with section 8(2)(b)(i) of MRAC. The Respondent argued that it is new evidence in as much as it is a list of sales not disclosed under section 8(2)(a)(i). Therefore, the Respondent requests the Board to exclude the Complainant’s rebuttal evidence.

DECISION

The request to exclude the Complainant’s rebuttal evidence is denied.

REASONS

The Board finds that the Complainant is not introducing new sales evidence by way of the sub-group of suburban properties. The Complainant was attempting to demonstrate that the Respondent could have selected sales comparables from this group, which sold in the relevant time frame.

C. OBJECTION BY RESPONDENT - THE RESPONDENT OBJECTED TO THE COMPLAINANT'S ISSUE RESPECTING PHYSICAL DEPRECIATION

Issue: Is the objective “The improvement value on the subject is incorrect. The net items do not have any physical depreciation” identified on the complaint form?

The Respondent raised this objection under MRAC section 9(1) failure to disclose which states “a composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.” The Respondent submitted a copy of the Complainant's Assessment Review Board complaint which listed the following:

*Common Issues – Legislative 1-3

1. The subject property is assessed in contravention of section 293 of the Municipal Government Act and Alberta Regulation 220/2004.
2. The use, quality, and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirement of section 289(2) of the Municipal Government Act.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.

* Common Issues – All property types 4-7.

4. The assessment of the subject property is in excess of its market value for assessment purposes.
5. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.
6. The information requested from the municipality pursuant to section 299 or 300 of the Municipal Government Act was not provided or was so expensive that the costs impeded access to information.
7. The classification of the subject premise is neither fair, equitable, or correct.

*Site specific grounds 8+.

8. The property characteristics have not been properly considered.
9. The assessment inadequately considers neighborhood influences.
10. The assessment of the subject property is inequitable when considering the assessments of similar properties.
11. The topography, rights-of-way influences, encumbrances, shape, access, amongst other influences are not captured in the assessment.
12. The time adjustments applied by the assessor are incorrect.
13. Based on sales transactions, the assessment per square foot for the subject property is too high. Market indicators suggest the assessment should be lower.
14. The impact of environmental remediation costs and associated stigmas has not been adequately captured in the assessed value.

Please note: All the evidence supporting the above issues/grounds will be provided in accordance with the legislation (42 days prior to the hearing) and after further investigation some of these issues may be resolved prior to a hearing.

The Respondent argues that none of the above issues identify the matter of physical depreciation, and therefore, the Board must not hear this matter.

The Respondent submits that all of the complaints filed by this agent have the same list of issues and grounds which are general and the Respondent does not know the case to be met.

The Complainant argues that Issue 2. on the complaint form deals with the improvement. It states “The use, quality, and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirements of section 289(2) of the Municipal Government Act.” This would, the Complainant argues, cover the fact that the City had not applied depreciation to the net items.

DECISION

The objection by the Respondent is upheld and the matter respecting physical depreciation will not be heard by the composite assessment review board.

REASONS

The Board reviewed the wording of the Complainant’s Issue 2 that states “The use, quality, and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirements of section 289(2) of the Municipal Government Act.” The Board finds that Issue 2 as stated does not satisfactorily disclose the issue of depreciation on the improvement. The Respondent could not have reasonably known that the complaint was about the calculation of the improvement value in respect of obsolescence.

The practice of the Complainant to use the same list of issues and grounds for every property complaint regardless of the specific issues related to the property does not allow the Respondent to know the case to be met. In spite of fourteen issues being listed on the complaint form, the Complainant brought four issues forward at the hearing.

A fair hearing process requires proper disclosure beginning with more carefully worded issues that reflect the reasons for the complaint against a particular property assessment. MRAC sections 8 and 9 set out the rules for disclosure for both parties. Since the matter of depreciation was not identified on the complaint form, the composite assessment review board will not hear this matter.

D. OBJECTION BY RESPONDENT – THE RESPONDENT OBJECTED TO THE COMPLAINANT’S ISSUE RESPECTING THE VALUE OF THE SUBJECT PARKING LOT BEING CAPTURED IN THE ASSESSMENT OF THE ADJOINING PARCEL

Issue: Is the objective “The value of this property has been captured in the assessment of the adjoining bank. This value should be \$500.00.” identified on the complaint form?

The Respondent raised this objection under MRAC section 9(1) Failure to disclose which states “a composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.” The Respondent submitted a copy of the Complainant’s Assessment Review Board complaint which listed the following:

***Common Issues – Legislative 1-3**

1. The subject property is assessed in contravention of section 293 of the Municipal Government Act and Alberta Regulation 220/2004.
2. The use, quality, and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirement of section 289(2) of the Municipal Government Act.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.

*** Common Issues – All property types 4-7**

4. The assessment of the subject property is in excess of its market value for assessment purposes.
5. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.
6. The information requested from the municipality pursuant to section 299 or 300 of the Municipal Government Act was not provided or was so expensive that the costs impeded access to information.
7. The classification of the subject premise is neither fair, equitable, or correct.

***Site specific grounds 8+.**

8. The property characteristics have not been properly considered.
9. The assessment inadequately considers neighborhood influences.
10. The assessment of the subject property is inequitable when considering the assessments of similar properties.
11. The topography, rights-of-way influences, encumbrances, shape, access, amongst other influences are not captured in the assessment.
12. The time adjustments applied by the assessor are incorrect.
13. Based on sales transactions, the assessment per square foot for the subject property is too high. Market indicators suggest the assessment should be lower.
14. The impact of environmental remediation costs and associated stigmas has not been adequately captured in the assessed value.

Please note: All the evidence supporting the above issues/grounds will be provided in accordance with the legislation (42 days prior to the hearing) and after further investigation some of these issues may be resolved prior to a hearing.

The Complainant argued that Issue 4 on the complaint form deals with the issue of the parking lot. Issue 4 states “The assessment of the subject property is in excess of its market value for assessment purposes.”

DECISION

The objection is overruled and the matter respecting the value of the subject parking lot being captured in the assessment of the adjoining lot will be heard.

REASONS

The Board agrees with the Respondent, that Issue 4 is very general, however, the market value, or rate per sq. ft. of the subject parking lot is the issue and is included in Issue 4. The statement respecting the subject parking lot value being captured in the assessment of the adjoining lot is an argument which relates to the correct rate per sq. ft.

Since the Board finds that Issue 4 has satisfactorily identified the issue, the matter will be heard.

E. MERIT HEARING

BACKGROUND

The subject property located at 12703-97 Street NW in the Killarney subdivision is a 24,971 parcel improved with paving and utilized as a parking lot.

ISSUES

1. What is the correct assessment per square foot for the subject vacant land?
 - a. Is some of the value of the subject property captured in the assessment of the adjoining bank property (Roll Number 3114115)?
2. Is the assessment per square foot of the subject equitable compared to similar properties?

The only issues that the Complainant brought forward in the hearing before the Composite Assessment Review Board (CARB) are those referred to above, therefore the CARB has not addressed any of the other issues initially raised by the Complainant on Schedule 1.

LEGISLATION

S.467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

S.467 (3) 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,
- b) the procedures set out in the regulations, and
- c) the assessments of similar property or businesses in the same municipality.

POSITION OF THE COMPLAINANT

The Complainant requested that the assessment for the land portion of the subject property be reduced to \$553,231 based on \$22.15 per sq. ft. Initially, the Complainant requested the improvement value be reduced to \$10,044. As a result of the ruling in the preliminary matter, physical depreciation will not be dealt with and the improvement portion of the assessment is \$41,848. Therefore, the revised request is \$595,079 for land and improvements.

In support of the \$22.15 rate per sq. ft. for land, the Complainant presented five sales comparables which have an average adjusted sale price of \$22.15 per sq. ft. In addition, the Complainant presented an offer to purchase dated June 16, 2009 for \$25.00 per sq. ft. The offer has not been accepted to date.

The Complainant argued that the subject assessment is inequitable. In support of this argument, the Complainant provided three assessment comparables which average \$23.29 per sq. ft. In

answer to questions, the Complainant agreed that two of these sales are on 97 street reasonably close to the subject property, and the third sale is located more distant at Whitemud and 17 street.

POSITION OF THE RESPONDENT

The Respondent provided two sales comparables that average \$72.82/sq ft which the Respondent argues, supports the \$42.93/sq ft used to calculate the assessment of the subject property.

The Respondent presented six assessment comparables which average \$68.51 per sq. ft. One of the comparables is relatively close in lot size to the subject property, and the other five comparables are much smaller in lot size.

FINDINGS

The Board finds insufficient evidence in sales or equity comparables presented by the Complainant to reduce the subject property assessment. The correct assessment per square foot for the subject property is \$42.93.

DECISION

The complaint is denied and the 2010 property assessment is confirmed at \$1,113,500.

REASONS FOR THE DECISION

1. The Complainant provided five sales comparables as evidence with an average adjusted sales price of \$22.15 per sq. ft. compared to the assessment of the subject at \$42.93 per sq. ft. The Board found all of these comparables somewhat lacking for the following reasons:

The property at 12518-97th Street, although a corner lot on a major thoroughfare with high traffic exposure, has limited access from 97th Street. Also, the market value of this property may further be negatively influenced by a utility right of way, a cell tower lease and the grade elevation in respect to 97th Street.

The property located at 9225-118 Ave and the parcel of land located at 14307-23 Ave are distant from the subject.

The property on 4402-118 Ave, being quite distant from the subject, also has a restrictive covenant which may affect market value adversely.

The property located at 8103-160 Ave is also distant from the subject, and has a restrictive covenant and that may have a negative influence on the market value. It is a dated sale and is less reliable because of the length of time (approx. 3 years) requiring an adjustment for time.

The Board placed little weight on the Offer to Purchase the land at 13015-97 Street because this is not a market transaction.

2. The Board turns its attention to the second question as to whether or not any value is captured in the adjacent parcel at 12703-97 Street (Roll number 3114115).

In order to convince the Board that some of the value for the subject parking lot is captured in the adjacent Bank property (Roll number 3114115), the complainant must demonstrate that the rental rate used to calculate the assessment for the Bank property is higher than the typical rental rate. The Bank property assessment was prepared using a \$35.00 per sq. ft. rental rate and the Complainant failed to provide any comparables to show that the \$35.00 rate is above average.

Further, there is no evidence of a restrictive covenant tying the subject parcel to the Bank parcel. Accordingly, the subject parking lot must be valued as a separate parcel at market value.

3. The Complainant provided three equity comparables in support of its contention that the subject parking lot is inequitably assessed with similar properties. The first comparable at 13015 97 Street NW is 1.7 times larger than the subject parcel and is assessed at \$23.37 per sq. ft. vs. the subject at \$23.29. The comparable at 12518 97 Street is 2.5 times larger than the subject and is assessed at \$23.90 per sq. ft. Taking into consideration the economies of scale, these two larger parcels should be assessed at a lower rate per sq. ft. than the subject. It is noted by the Board that the equity comparable at 13015 97 Street NW was reduced to \$23.37 based on a recommendation and it is not known why the assessment was reduced, therefore, it may not be a good comparable. Finally, the equity comparable located at 4120 17 Street NW is not in a similar location, and is nearly twice as large as the subject, therefore, it is dissimilar. Given the lack of similarity of the above equity comparables to the subject property, the Board will not alter the assessment on this basis.

DISSENTING DECISION AND REASONS

There were no dissenting decisions or reasons.

Dated this 29th day of July, 2010 at the City of Edmonton, in the Province of Alberta.

Presiding Officer

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to section 470(1) of the Municipal Government Act, R.S.A. 2000, c.M-26.

CC: Municipal Government Board
CU Real Property (4) Ltd
CU (4) GP Inc.