

**TOWN of BANFF  
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-26.1, Section 460(4).

**between:**

***Altus Group Limited, COMPLAINANT***

**and**

***The Town of Banff, RESPONDENT***

**before:**

***Paul G. Petry, PRESIDING OFFICER***

***Barbara Kusterski, MEMBER***

***Stavros Karlos, MEMBER***

This is a complaint to the Town of Banff Assessment Review Board in respect of Property assessment prepared by the Assessor of The Town of Banff and entered in the 2010 Assessment Roll as follows:

**ROLL NUMBER: 000225**

**LOCATION ADDRESS: 317 Banff Avenue**

**HEARING NUMBER: 387/01/10**

**ASSESSMENT: \$35,225,000**

This complaint was heard on 9th day of September, 2010 at Town Council Chambers located at 110 Bear Street Banff, Alberta.

Appearing on behalf of the Complainant:

- Altus Group Limited – A. Izard

Appearing on behalf of the Respondent:

- Town of Banff – F. Watson

**Property Description and Background:**

The subject property is a shopping mall built in 1990 with three levels above grade and a lower concourse level. It consists of just under 100,000 sq. ft. of leasable space and is well located with frontage along Banff Avenue and Wolf Street. The assessment of the subject property has been developed using the capitalized income approach and the income applied was the total of actual contract rents along with the owner's estimated income for vacant space. The primary issue in dispute is the Assessors use of actual income rather than typical income. The Complainant also believes that additional space should be exempt from taxation.

**Issues:**

1. What is the most appropriate approach for deriving the income for the subject property?
2. Are there additional spaces and tenants that should be exempt from assessment or taxation?

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

1. The CARB was not convinced that the income used by the Assessor should be distributed in this case.
2. The CARB accepts the consensus reached by the parties that parking space occupied by the Town of Banff should be exempt and the amount of \$672,500 removed from the taxable portion of the assessment for the subject. The space occupied by Banff/Lake Louise Tourism is found not to be exempt.

Several other issues were raised in the Complainant's complaint filed with the Assessment Review Board (ARB) on April 27, 2010. The only issues that the parties brought forward in the hearing on September 9, 2010 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 on the complaint form.

**Overview of the Party,s Positions****1. Applicable Income For the Subject**

The Complainant referred to Part 1 (2) of the Matters Relating to Assessment and Taxation Regulation (MRAT) which reads as follows:

*" 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."

The Complainant suggested that mass appraisal according to MRAT is not a site specific valuation but rather a process which requires the use of common data for a group of properties and allows for statistical testing of the results. The Complainant argued that the Assessor's use of actual contract rents within the subject does not comply with sub (c) which requires the use of typical data for similar properties. In the case of the subject rents vary widely. For example on the main floor the actual rents range from \$35 per sq. ft. to \$105 per sq. ft. and on the low concourse the food court rents range from \$30 per sq. ft. to \$90 per sq. ft. The Complainant brought forward the 1881 Supreme Court of Canada decision in *Jonas v. Gilbert*... which he argued stands for an equitable distribution of the tax burden. The Complainant indicated that the inequity apparent in these wide variations in rents results in a similar inequity in the distribution of the tax burden among the tenants, as each tenant pays their portion based on their actual lease rate and the space occupied. The result can be that one tenant's portion of the tax burden may be double or triple that of a neighbouring equivalent space.

The Complainant provided an analysis of rents within the subject based on similarity of space on a floor by floor basis. The Complainant had determined the median rental rate for each space category and recommended that the median rates should be used as typical values in developing the assessment for the subject. The recommended median rates and resulting values are shown below:

Space Type	Area	Rate	Total
Main Floor Small CRU space	14,056	\$45	\$632,520
Main Floor Medium CRU space	32,914	\$30	\$987,420
Second Floor CRU space	22,535	\$25	\$563,375
Kiosk space	795	\$105	\$ 83,475
Food Court space	3,115	\$90	\$280,350
Third Floor Office space	24,886	\$16	\$398,176

These values along with the unchanged values the Assessor had used for sign rental, parking and storage space resulted in a revised potential gross income for the subject in the amount of \$3,127,969. The Complainant argued that rental values have decreased over the last few years and newer leases signed particularly on the main level support the median values. While the Complainant raised some concern with other values the Assessor had used in developing the assessment, the Complainant's recommended pro-forma applied the income value of \$3,127,969 along with the values used by the Assessor for all other factors which resulted in the Complainant's recommended assessment before exemptions in the amount of \$28,507,500.

The Respondent indicated that assessments of all commercial properties in the Town of Banff have been developed using the capitalized income approach and all are based on actual contract rents along with owner's estimates of rents for vacant space. In 2003 the Town of Banff engaged a third party firm to assist with a consultation process with the business community respecting assessment methods and processes. The consensus developed through this process was that the use of actual contract rents would be the fairest approach in determining a property's income and this would allow

owners to track year to year changes in assessments. In support of this approach, the Respondent introduced an excerpt from the Alberta Assessors Shopping Centre Valuation Guide dated June, 1998. This excerpt was titled 5.0 Example of Property Valuation. In this excerpt under the heading "Form SC2-Shopping Centre Rent Roll Analysis" the respondent highlighted wording within the following paragraph:

*"The second form is provided to assist the assessor in determining the appropriate rents to be applied to the subject property. If actual rents as determined from the subject, are within the range of rents for that type of store and class of shopping centre (as determined in the rent analysis study) apply actual rents. Otherwise, use the typical rents indicated from the market study".*

The Respondent acknowledged that rents may have declined somewhat in recent years, however, the mix of older and more recent rents are believed to reflect the current market. It was also pointed out that the subject property had sold for \$44,600,000 in October 2005. The 2009 assessment was \$49,083,850 and the current assessment for 2010 has been reduced to \$35,225,000 representing a 40% reduction while the average reduction for other commercial properties 2009-2010 was only 27%. With respect to the Complainant's concern with an inequitable distribution of the subjects property assessment to tenants, the Respondent provided the rent roll for the subject which shows that property taxes are evenly distributed between tenants based on \$6.02 per square foot with only a few exceptions. The Respondent argued that a departure from the use of actual contract rent as suggested by the Complainant would create inequity with the balance of commercial assessments and further a reduction in market value for the subject has not been supported by the Complainant.

## **Findings and Reasons**

This complaint was brought forward by Altus Group Limited as representatives for the owners MDC Properties Services Ltd. The main thrust of the complaint before the CARB on September 9, 2010 related to methodology applied by the Assessor in developing the assessment and the inequitable results for the tenants of the subject property. The Complainant did not bring forward evidence which effectively challenged the correct market value of the subject based on sales or values of similar properties within the Town of Banff. While the Complainant challenged the Assessors use of actual contract rents claiming that this did not meet the requirements of MRAT respecting typical data, the analysis of the Complainant also considered only the rents within the subject. The Complainant's use of median rents produced a lower value for the subject property; however these median values were not supported by typical rental values for similar properties in the municipality. Further the Board had no evidence to confirm that the resulting value is a reasonable estimate of the subject property's market value or that the recommended value would be equitable considering the assessments of similar commercial properties. The CARB considered the Complainant's argument that the use of actual contract rents creates an inequitable distribution of the assessment and tax burden for the tenants given the wide range of rent rates in place. The Complainant did not lead evidence to support the method of tax distribution suggested; however the evidence of the Assessor in the form of the rent roll showed that the property tax for the subject is distributed on a relatively even basis at \$6.02 per sq. ft. Where this is not the case, it appears that such tenants are generally in kiosk space or very small spaces and are paying rent well above the norm. These high rents may include their share of the property tax burden. In light of the foregoing, the CARB concluded that there was insufficient evidence on which to base typical rents or an alternate value for the subject property.

In this case the Board did not have evidence on typical data for lease rates and other values which should form the basis of the income approach; the CARB nevertheless has some concern with a methodology which places significant reliance on the actual income performance of individual properties. By way of example it would appear that two very similar free standing neighbouring properties could have actual rents that vary by a large differential. In this circumstance, given what the Board understands of the Assessors method, the result in assessments would also vary by a large differential and if so such a result would be incorrect and inequitable. Because assessments must be of the fee simple estate it is possible that in cases where a lessee has a very low lease rate, the lessee in fact has thereby acquired an interest in fee simple estate. In such cases the assessment must account for both the interests in the fee simple estate of the owner and the lessee. The use of typical lease rates and other factors work to resolve this potential issue. Similar properties must have similar assessments from both a correctness and equitable stand point. In the subject case this question was not squarely before the CARB as the Board did not have evidence of similar properties comparable to the subject. The CARB therefore confirms the overall assessed value of the subject.

## **2. Additional Exemptions**

The Assessor had already exempted the space occupied by Alberta Mental Health, however the Complainant took the position that additional exemptions should be made for the space occupied by the Town of Banff and Banff/Lake Louise Tourism. During a recess the parties were able to reach an agreement that the parking space occupied by the Town of Banff should in fact be exempt in the amount of \$672,500.

The Complainant stated that while the Banff/Lake Louise Tourism organization was unaware of the application process, the CARB has authority under section 460(1)(5) of the Municipal Government Act (MGA) to decide exemption matters. The Complainant argued that the Banff/Lake Louise Tourism space should also be exempt and provided information in the form of press releases and web site data to show that the goals and purposes of this organization are for the benefit of the community as set out in section 1(1)(b) of the Community Organization Property Tax Exemption Regulation (COPTE). Also the Complainant provided a list of similar organizations and indicated that the Tourism Calgary with very similar goals and purpose is exempt. While the Banff/Lake Louise Tourism organization may not have made an application they are nevertheless a non-profit, benevolent organization with purposes solely for the benefit of the community and therefore entitled to exemption under COPTE. The Complainant had calculated the exemption for Banff/Lake Louise Tourism to be \$687,300.

The Respondent argued that this organization had not made application for exemption as it should have done according to section 16 (1)(a) of COPTE and the decision initially at least is that of Town Council. Based on the information available it is not clear that the Banff/Lake Louise Tourism organization would meet the criteria set out in COPTE.

## **Finding and reasons**

The Board requested that in accordance with section 465 of the MGA that it be provided with the

application form used to apply for exemption by the Town of Banff and this was provided. The CARB notes that section 16(1)(a) of COPTER provides that an application for exemption is required by September 30 of the year proceeding the tax year. Apparently no application was made and no application was presented as evidence before the CARB. The regulation and the application form indicate that exemptions must be based on a number of facts such as if and how the organization is registered as a non-profit, how the organizations funds are used, membership criterion, purpose and facility use, percentage time used for the qualifying purpose and others. The CARB agrees with the Assessor that even if the Board were inclined to decided this matter outside the application process that there is insufficient factual information as required by the regulations to allow the Board to make a decision. In any case the CARB concludes that Banff/Lake Louise Tourism should have proceeded to apply for exemption consideration in the manner set out in section 16 of COPTER and further based on the evidence before the Board, the space occupied by this organization is not found to be exempt.

### Decision Summary

Based on the foregoing findings and reasons the CARB has decided to confirm the overall assessment for the subject property at \$35,225,000. From this value the CARB has deducted the exemption for Alberta mental Health in the amount of \$89,500 and the exemption for the Town of Banff in the amount of \$672,500 which results in a net assessment of \$34,463,000.

It is so ordered.

DATED THIS 27 DAY OF September 2010.



**Paul G. Petry**  
Presiding Officer

*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.*