

Central Alberta

Regional Assessment Review Board

Complaint ID#:0262 1243

August 30, 2019

Complainant

Altus Group
2020 - 4th Street SW, Suite 310
Calgary, AB T2S 1W3

Email: calgarytax@altusgroup.com
(paper copy to follow)

Respondent

Revenue & Assessment Services
4th Fl, 4914 48 Ave
Red Deer, AB T4N 3T4

Email: assessment@reddeer.ca
(paper copy to follow)

RE: NOTICE OF HEARING DECISION - ROLL 30002921780

Dear Sir/Madam:

Further to the hearing held during the week of July 29, 2019, the Board issues the attached Decision. Paper copies will follow where indicated.

Section 481(2) of the *Municipal Government Act* states:

"If the assessment review board makes a decision in favour of the complainant, the fees paid by the complainant under subsection (1) must be refunded."

Any refunds owed will be sent under separate cover. If you have any questions concerning these matters or for clarification, please contact the Board Clerk at (403) 342-8132.

Regards,



L. Stubbard
Regional Assessment Review Board Clerk

Att.

xc: K. Waddle, Legislative Services (via email only): kristen.waddle@reddeer.ca
477599 Alberta Ltd. (via mail only): 4040 Blackfoot Trail SE, Calgary AB T2G 4E6
mgbmail@gov.ab.ca

Central Alberta

Regional Assessment Review Board

Complaint ID 0262 1243
Roll No 30002921780

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: July 29, 2019

PRESIDING OFFICER: W. Johnston
BOARD MEMBER: D. Dey
BOARD MEMBER: A. Gamble

BETWEEN:

ALTUS GROUP LIMITED ON BEHALF OF
477599 ALBERTA LTD.

Complainant

-and-

THE CITY OF RED DEER

Respondent

This decision pertains to a complaint submitted to the Central Alberta Regional Assessment Review Board in respect of a property assessment prepared by an Assessor of The City of Red Deer as follows:

ROLL NUMBER: 30002921780
MUNICIPAL ADDRESS: 6350 67 ST, Red Deer, AB
ASSESSMENT AMOUNT: \$4,417,900

The complaint was heard by the Central Alberta Regional Assessment Review Board on the 29 day of July 2019, at the City of Red Deer, in the province of Alberta.

Appeared on behalf of the Complainant:

Andrew Iazard, Agent Altus Group Limited

Appeared on behalf of the Respondent:

Jason Miller, Assessor City of Red Deer
Maureen Cleary, Assessor City of Red Deer
Amelia Roth, Law Student City of Red Deer

DECISION: The assessed value of the subject property is changed to \$3,335,900.

JURISDICTION

- [1] The Central Alberta Regional Assessment Review Board ["the Board"] has been established in accordance with section 455 of the *Municipal Government Act*, RSA 2000, c M-26 ["MGA"], and The City of Red Deer, Bylaw No. 3474/2011, *Regional Assessment Review Board Bylaw* (November 14, 2011).

PROPERTY DESCRIPTION AND BACKGROUND

- [2] The subject property known as the Cash Casino is situated at 6350 67 ST. The improvement was constructed in 1989 as a strip shopping centre and subsequently expanded. The land area is 84,070 square feet (SF) and includes a building of 24,860 SF. The property is assessed as a strip shopping centre at a rental rate of \$15.00 per SF, a vacancy allowance of 8.00%, operating costs of \$8.00 per SF, non-recoverable expenses of 2.00% and a capitalization rate of 7.25%.

PRELIMINARY MATTERS

- [3] The Presiding Officer confirmed that no Board Member raised any conflicts of interest with regard to matters before them.
- [4] Neither party raised any objection to the panel hearing the complaint.
- [5] The Complainant and Respondent requested that all verbal evidence, questions, argument and summary regarding the legal argument from the hearing for file 0262 1242 Roll 30002910155 be carried forward to this hearing. The Board accepted these requests.

Legal Argument:

- [6] The Respondent objected to the inclusion of the Legal Argument document (C3) at this hearing. The basis for the objection was that the document was not proper rebuttal evidence, that throughout the document there were references to the City of Calgary and that it does not respond to the City of Red Deer evidence. The Respondent further argued that the document could have been submitted earlier and the effect was case splitting. The Complainant argued that the majority of the document was a legal opinion and not evidence and further that a legal opinion can be submitted at any time.
- [7] The Board reviewed the document and found the majority of the document were references made to court decisions or statutes. Knowing that court decisions and statutes are public information the Board accepted the Legal Argument and will place the appropriate weight on the document the Board deems appropriate. This document will be carried forward to other hearings.
- [8] The Board confirmed the submissions of the parties and entered the following Exhibits into the record:
- A1 – Hearing Materials provided by Clerk (19 pages)
C1 – Complainant Disclosure (209 pages)

C3 – Complainant Legal Argument (331 pages)

R1 – Respondents Disclosure (42 pages)

ISSUES

- [9] The Issue to be decided by the Board is should the rental rate be \$11.50 per SF or \$15.00 per SF as assessed.

POSITION OF THE PARTIES

Position of the Complainant

- [10] The Complainant presented an overview of the property including images of the subject property, aerial photographs of the property and the 2018 assessment calculation for the property.
- [11] The Complainant presented the position that the subject property is a single tenant, single use building and should be assessed using a rental rate the same as other properties of the same size. Two properties that the Complainant stated were superior to the subject, Ashley Furniture and Michaels Arts and Crafts at 5250 22 Street were highlighted as leasing at \$14.00 per SF, an amount less than the subject.
- [12] The Complainant also presented an equity comparable property, the Giant Tiger store at 6751 50 AV. This property contains a space of 20,219 SF and is assessed at a rate of \$11.50 per SF.
- [13] The Complainant presented the properties at 6870 50 AV (Auto Value) of 9,750 SF in size and 6816 50 AV (Telebyte) of 10,670 SF in size, as equity comparable properties both assessed at a rental rate of \$11.50 per SF.

Position of the Respondent

- [14] The Respondent also presented aerial photographs of the subject property as well as pictures of the exterior of the property.
- [15] The Respondent argued that the subject property had been a strip shopping centre and that an addition had been constructed some time later. The Respondent pointed out in the pictures presented that the doors remain in the front of the building for the different sections of the building and that the rooftop mechanical units for each section remain. The Respondent stated that this property is still a strip shopping centre with the demising walls removed and therefore has been assessed as a strip shopping centre.
- [16] The Respondent presented a table of 18 Retail Strip Shopping Centre spaces showing their strata (quality), lease area and assessed rental rate. The strata were all "3" and the rental rates were all \$15.00. The only variable was the lease areas which varied from 24,860 SF (believed to be the subject) to 1,511 SF.

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- [17] A further table of 29 Retail Strip Shopping Centre Spaces titled “equity comparable properties continued” where, as with the previous table, the only variable information was the lease area was also presented. The lease areas varied from 646 SF to 1,510 SF.
- [18] Another table titled “Respondent Rental Evidence – Actual” was presented. This table presented 15 leases of the same assessment code, location, tenant lease type, strata (quality) and market lease rate. The lease areas varied from 5,000 SF to 646 SF and the actual lease rates varied from \$14.00 per SF to \$26.01 per SF. The lease start dates varied from 04/15/2014 to 03/01/2018 and the lease end dates varied from 03/31/2017 to 02/01/2023.
- [19] The lease of a higher strata (quality) property signed in 03/01/2016 and of 12,583 SF was presented to indicate an upper end benchmark of a larger space was presented. This leased area was assessed as \$20.00 per SF and the actual lease rate was \$19.32 per SF.

Complainant’s Rebuttal:

Legal Argument:

- [20] The Complainant stated that the issue addressed by this legal argument was the lack of detail contained in the information presented by the Respondent. The majority of the information presented does not contain sufficient information to allow the Complainant to test the information to ensure it is correct nor to allow the Complainant to respond to the information. The legal argument states the position that the lack of information does not allow procedural fairness, it does not allow the Complainant to know the case before them. The Complainant pointed out, that in some of the hearings being held this week, the Respondent has provided detailed information including addresses while not in others.
- [21] The Complainant highlighted that the Matters Relating to Assessment Complaints Regulation paragraph 9(2)(b) requires the Respondent to provide information “in sufficient detail to allow the complainant to respond or rebut the evidence at the hearing”. Rather the Respondent has stated that they are complying with the Guide for the Exchange of Assessment Information: Market Value Properties issued by Alberta Municipal Affairs. In addition, the Respondent stated they are complying with the Freedom of Information and Protection of Privacy Act (FOIP) when providing information. The Complainant highlighted section 301.1 of the Municipal Government Act (MGA) which indicates the FOIP Act does not apply to the provision of information to an assessed person. Several court cases in support of the Complainant’s position were referenced in the Legal Argument.
- [22] The Complainant requested the Board place little or no weight on the Respondent’s evidence due to the lack of on ability to test the data.

BOARD FINDINGS and DECISION

- [23] The Complainant presented previous Assessment Review Board decisions in support of their positions. While this Board respects those decisions, it is mindful that those decisions were made in respect to issues and evidence that may not be similar to the evidence presented at this hearing. As a result, this Board placed limited weight on those decisions, unless this Board

determined that the issues and evidence were shown to be materially similar to the issues and evidence presented in this hearing.

Legal Argument:

- [24] The Board reviewed the evidence presented by the Complainant and finds that the Complainant has, on a balance of probabilities, proven that the assessment of the subject property is incorrect.
- [25] A Complainant bears the ultimate of persuasive burden in an assessment complaint before the Board. This concept is addressed in *Beta Management v City of Edmonton* 2017 ABQB 571 (“Beta”) at paragraphs 139 through 141.
- [26] In this complaint, the Complainant argued for and provided the Board with supporting evidence for, a requested assessed value. In support of the Respondent’s position on the disclosure of information, the Respondent referred to the disclosure Guide.
- [27] In this Board’s view, the Guide is not binding on the Board. The Guide is a non-legislative guideline. The Board would be fettering its discretion by following a non-legislative guideline.

Rental Rate:

- [28] The Board determined the first matter to be decided was if the subject property was a strip shopping centre or not. The Board notes that Section 289(2)(a) of the MGA requires that assessments must reflect “the characteristics and physical condition of the property on December 31 of the year prior to the year on which a tax is imposed ...”. The Board does not dispute that the doors continue to exist on the exterior of the building and that the mechanical equipment exists on the roof. The Board finds that the Respondent presented no evidence of the state of the interior of the building and the renovations made at the time of the addition which would allow or not allow the demising walls to be re-installed. The Board notes that the subject has been modified for a specific use, that of a casino.
- [29] The Board finds that the subject property did not reflect the characteristics of a strip shopping centre on December 31 of the year prior to the year on which a tax is imposed.
- [30] The Board finds that the two properties (6751 50 AV and 8071 50 AV) presented by the Complainant as equity comparables to the subject property are of a comparable area and are comparable to the subject. These properties are assessed at \$11.50 per SF and \$10.00 per SF which supports the requested lease rate of \$11.50 per SF.

DECISION SUMMARY

- [31] The Board changes the assessment for the subject property to \$3,335,900.
- [32] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 30th day of August, 2019 and signed by the Presiding Officer on behalf of all the panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



FOR

W. Johnston
Presiding Officer

If you wish to appeal this decision you must follow the procedure found in section 470 of the MGA which requires an application for judicial review to be filed and served not more than 60 days after the date of the decision. Additional information may also be found at www.albertacourts.ab.ca.

APPENDIX

Documents presented at the Hearing and considered by the Board.

<u>NO.</u>	<u>ITEM</u>
1.	A1 – Hearing Materials provided by Clerk (19 pages)
2.	C1 – Complainant Disclosure (209 pages)
3.	C3 – Complainant Legal Argument (331 pages)
4.	R1 – Respondents Disclosure (42 pages)