

Complaint ID No. 0194 1255

Roll No. 030000160

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COMPOSITE ASSESSMENT REVIEW BOARD DECISION

HEARING DATE: October 3, 2019

PRESIDING OFFICER: Brenda Hisey  
BOARD MEMBER: Maureen Chalack  
BOARD MEMBER: Al Gamble

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BETWEEN:

ROYAL BANK OF CANADA

Complainant

-and-

CITY OF LACOMBE

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 for the City of Lacombe as follows:

ROLL NUMBER: 030000160

MUNICIPAL ADDRESS: 5022 50 Avenue

ASSESSMENT AMOUNT: \$611,000

The complaint was heard by the Central Alberta Regional Assessment Review Board on the 3rd day of October 2019, at The City of Lacombe, in the province of Alberta.

Appeared on behalf of the Complainant:

Kam Fong, Altus Group Limited

Appeared on behalf of the Respondent:

Warren Powers, Powers & Associates Appraisal Services

**DECISION:** The assessed value of the subject property is reduced to \$473,300.

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**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 is a 3,750 square foot (sf) bank located at 5022 – 50 Avenue in the City of Lacombe. The land area is 6,000 sf and the building (known as the “Royal Bank”) is classified as a commercial office in average condition.
- [3] The current assessment has been calculated utilizing the Income Approach with a 3.0 % vacancy rate, 1.0 % non-recoverable rate, 1.0 % reserve for replacements and a capitalization rate of 10.5%.

**PROCEDURAL MATTERS**

- [4] The Presiding Officer confirmed that no Board Member raised any conflicts of interest regarding the matters before them.
- [5] Neither party raised any objection to the panel hearing the complaint.
- [6] The Board confirmed the submissions of the parties and entered the following Exhibits into the record throughout the hearing:

A1 - Hearing Materials provided by the Clerk (20 pages)

R1 - Respondent Disclosure (preliminary issue pages 1-17, and merit hearing pages 18-38)

C1 – Complainant Preliminary Issue Response (C1-235 pages)

C2 - Complainant Disclosure (1-185 pages)

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**PRELIMINARY ISSUE**

- [7] The Respondent made a request regarding a preliminary issue pursuant to s. 295(4) of the *Municipal Government Act* (MGA). The application to dismiss the complaint was put forward because the property owner did not provide information in response to the City's Request for Information (RFI); as required vide s. 295(1) of the MGA.

**Applicant (City of Lacombe) position- Preliminary Issue**

- [8] It was the Applicants contention that under s. 295(1) of the MGA a person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment. Under s. 295(4) of the MGA no person may make a complaint in the year following the assessment year under s. 460 if the person has failed to provide the information requested under 295(1). It was noted that RFI requests for this property were sent over the past 5 years and historically no information had been provided:
- i. October 01, 2014 RFI mailed – no information received
  - ii. August 04, 2015 RFI mailed - no information received
  - iii. August 02, 2016 RFI mailed - no information received
  - iv. August 01, 2017 RFI mailed - no information received
  - v. August 01, 2018 RFI mailed - no information received
- [9] The Applicant stated that the subject property is a non-residential property (Strip/Retail) which is assessed using the income approach. It is necessary to evaluate income and expense data from a selection of properties to prepare the tax information for the City. With limited or historically delinquent returns it is difficult to prepare accurate and reliable assessments for the Municipality.
- [10] The RFI requests were mailed to the address listed on the assessment/tax notice and the address noted for the assessed person at the time of mailing. The most recent request was sent to Bismark ND.
- [11] In support of the request to dismiss the merit hearing the Applicant provided the 2018 RFI letter, the property tax/assessment notice, the complaint form and applicable case law. The Applicant also suggested that it is the property owner's responsibility to provide updated information and addresses to the municipality.
- [12] The Applicant noted that taxes had been paid on the subject property.

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**Complainants (Altus Group) position- Preliminary Issue**

- [13] The Complainant stated that the property owner did not receive the RFI request and would have responded if it had been sent to the correct location. The address used to request the information was in Bismark, ND. When it was determined there was an incorrect address on file (two weeks prior to the hearing), an update was sent by the Owner. It was however too late to provide the requested information for this merit hearing.
- [14] The Complainant noted that there were several addresses used by the Municipality for the subject property and suggested the most appropriate would have come from The Land Titles Office. The registered owner and address on title indicated the local Royal Bank of Canada Branch and listed a local Lacombe address (the subject property). The Complainant again suggested that if the Applicant had followed up with the local office, the information would have been provided.
- [15] Additionally, the Complainant suggested that because nothing had been received there were no details provided by the Assessor on what information was requested, or if it was necessary.
- [16] In summary the Complainant stated that RFI had not been received by the correct department and without any further effort or follow up request to the that notice, it was unreasonable to deny an appeal.

**DECISION: Preliminary Issue**

- [17] The Board denies the Applicant's request to dismiss the assessment appeal and directs that the merit hearing proceed.

**BOARD FINDINGS AND DECISION SUMMARY: Preliminary Issue**

- [18] The Board accepts the validity of the City assessor's request for information and confirms the requirement to obtain this information is correct. However, the Board was not provided with any evidence to support the suggestion that the lack of information, not furnished by the property owner, prevented the assessor from preparing the current year assessment.
- [19] The Board also accepts the proposition that s. 295 (4) of the MGA provides an opportunity to deny the defaulting property owner, the right to file a complaint. However, pertinent case law tempers the powers granted to the assessor and expects a test of reasonableness (

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*Boardwalk Reit LLP v Edmonton, 2008 ABCA, or Alberta v Amoco Petroleum Ltd. 2000 ABCA 252).*

- [20] The Board finds that the Applicant did send a RFI to Bismark, ND and that the Complainant may not have received the request. The Board noted the reference to a letter dated November 29, 2015 in a September 28, 2018 email to the Applicant which stated an updated address had been provided. This email raises doubt as to the correctness of the address used to request the RFI.
- [21] Having regard for the facts described above, the Board finds on a balance of probabilities that the request was misdirected and not received; further the Applicant is responsible for showing the conditions under section 295(1) have been met and has not done so here.
- [22] The Board was not persuaded that the failure to comply with s. 254 of the MGA was intentional (or that the RFI was received by the Complainant) and therefore does not believe that removing the right of appeal is warranted in these circumstances. (*Calgary v Northland Properties Ltd. 2003 ABQB 668*).

#### **MERIT ISSUES**

- [23] Has the subject property been correctly and equitably assessed?
- a. Should a Capitalization Rate (cap rate) of 10.5% be applied within the Income Approach calculation?
  - b. Should a reduced rental rate of \$10 per square foot (sf) for the subject property be used to calculate the current assessment?

#### **POSITION OF THE COMPLAINANT**

- [24] The Complainant presented an overview of the subject property and the current assessment.
- [25] The appeal had been filed on the basis that the subject property was inequitably assessed when compared to similar properties. It was requested that a revised assessment should be considered which would reduce the typical rental rate from \$18 per square foot (sf) to \$10.00 per sf. The Complainant also suggested that the cap rate should be increased from 10.5% to 10.75% similar to the CIBC which is in close proximity to the subject. The resulting revised assessment would be \$331,600.

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- [26] To support the requested rental rate the Complainant provided several tables on recent leasing information for the City of Lacombe. From 28 comparable properties a median lease rate was shown to be \$10.12 per sf which supported the requested value of \$10 per sf. A second table of 24 properties with less than 10,000 sf spaces noted provided a median lease rate of \$10.38 per sf. Within both tables there was a similar use (Bank of Nova Scotia) which was listed at a lower rate of \$9.50 per sf.
- [27] It was the Complainants contention that the best comparables would be the two Banks located on the same block (BMO and CIBC) as the subject property (also a bank) which indicate the assessed value of the subject should be revised. The CIBC had a cap rate of 10.75% verses the subject at 10.5% and the BMO had a blended rental rate of \$14 per sf, neither of these properties were treated equitably to the subject.
- [28] Several commercial/retail/office properties were reviewed in detail with respect to building age, size, location and lease dates. The range of rental values was \$7.10 to \$29.00 per sf, but the Complainant suggested that many of the characteristics for these properties did not align with the subject, as the uses were very diverse. These tables were however a good indication of market value.
- [29] As an alternate valuation, the Complainant presented an equity request of \$14 per sf. The revised assessment from this calculation was \$475,300. This request was suggested based on four similar comparables in close proximity to the subject:
1. Bank of Montreal (BMO) – 5013 – 50 Avenue (commercial/retail/office in average condition). The size was similar to the subject and the year built was 1979. This property is assessed with a weighted average of \$14.38 per sf (\$16.00 and \$11.00 per sf) .
  2. Canadian Imperial Bank of Commerce (CIBC) - 5002 – 50 Avenue (commercial/retail/office in fair condition). The size was similar to the subject and the year built was 1938. This property has been assessed at \$13.00 per sf. The fair condition was reflected in the cap rate which was higher than the subject at 10.75%.
  3. Home Hardware – 4918 – 50 Avenue (commercial/retail). Built in 1915 but renovated and assessed at \$7.00 per sf. The finish was not to a bank standard; however, the cap rate was shown as 10.75%.
  4. Strip Mall at 5001 – 52 Street (directly behind the subject). This property has several uses but has a similar commercial/retail/office classification. The typical weighted rent is \$13.09 per sf.
- [30] The Complainant stated that he had visited the CIBC on October 2<sup>nd</sup>, 2019 and noted the finish for that Bank was similar to the subject property. The Respondent confirmed he had not inspected that property.
- [31] The cap rate argument was removed by the Complainant during the hearing as insufficient information was available to support the request.

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- [32] From questions presented to the Complainant it was confirmed that there were several other chartered banks in the Municipality that had not been used in the equity analysis as they had no access to that information. It was also noted that the leasing tables were based on market leases and used as indicators of value not equity.
- [33] In conclusion, the Complainant requested the subject property rental rate be reduced to \$10.00 per sf or alternately \$14.00 per sf for the 2019 assessment.

#### **POSITION OF THE RESPONDENT**

- [34] The Respondent explained that mass appraisal was used to determine the assessment base for property taxation in accordance with legislative requirements. Typical rates and values have been consistently applied in the Income Approach for commercial/retail/office properties to determine market value in the City of Lacombe.
- [35] It was the Respondents contention that the stratification of properties and application of typical variables has been appropriately and consistently applied to the assessment tax base. It was noted that the Complainant had provided no information to support an increase to the cap rate as all average properties were assessed at the same 10.5% rate.
- [36] To address the requested lease rate of \$10 per sf the Respondent acknowledged that there were ranges that should be considered acceptable as all properties were not the same. It was noted that the Scotiabank highlighted as similar to the subject, was located in an older strip mall which would command a lesser rate than a newer stand-alone building. It was also suggested that approximately 60% of the leasing table information was from that older strip Mall.
- [37] The Respondent went on to review several of the properties used by the Complainant and suggested that many were very different from the subject. It was argued that the quality of data, not quantity of information should be used to determine the correctness of the assessment.
- [38] The Board questioned effective age in conjunction with actual date of construction and tenant improvements. The Respondent suggested that the date of construction does affect building value but acknowledged that improvements could extend the life of a structure.
- [39] The Respondent suggested that the Complainant had not met the Burden of Proof standard and asked the Board to confirm the current assessment.

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**REBUTTAL**

- [40] The Complainant refuted the information regarding several lease dates offered by the Respondent and provided Land Titles documentation that indicated several of the lease agreements used by the Respondent to be older than suggested and outside a typical 5 year timeframe. It was the Complainants contention that several leases assigned in 1999 should be given less weight than more recently negotiated rents.
- [41] The Complainant also proposed that several of the existing step up lease agreements may be realizing higher rents than what could be negotiated today. It was requested that the Board analyze these lease dates and apply the appropriate weight to the rental information.

**BOARD FINDINGS and DECISION**

- [42] The Board finds the Complainant has provided several equity comparables that have been shown to be assessed at a lesser rate than the subject property. The BMO and CIBC are similar spaces in the downtown core area with the same economic influences, reported to have comparable finish, and similar attributes.
- [43] The Board gave less weight to the Respondents commercial/retail/office properties as these comparables did not require the same office size or finish as a bank space; or were in different parts of the City. The bank comparables provided by the Respondent did have a median rate similar to the subject however location and site suitability were most similar to the BMO and CIBC properties.
- [44] The Complainant verbally withdrew the cap rate argument during the summary portion of the hearing and the Board confirms there was insufficient evidence to warrant a change to that value.
- [45] Based on equity information provided to the Board the requested revised assessment of \$14.00 per sf is accepted. The requested \$10.00 per sf rental rate was not supported by typical or actual lease rates.
- [46] The Board acknowledges Section 467(3)(c) of the *Municipal Government Act*, RSA 2000, c M-26 states that an assessment review board must not alter any assessment that is fair and equitable, taking into consideration the assessments of similar property or businesses in the same municipality. For this hearing however, the Complainant has shown sufficiently compelling evidence on which a change to the assessment is warranted.

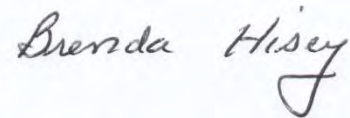


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**DECISION SUMMARY**

[47] The Board reduces the assessment to \$473,300.

[48] Dated at the Central Alberta Regional Assessment Review Board, in the City of Red Deer, in the Province of Alberta this 22 day of October, 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.



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Brenda Hisey

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](http://www.albertacourts.ab.ca).*

**APPENDIX**

Documents presented at the Hearing and considered by the Board.

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<u>NO.</u>	<u>ITEM</u>
1.	A.1 – Hearing Materials provided by Clerk
2.	C.1 – Complainants Disclosure 235 pages titled “Royal Bank”
3.	C.2 – Complainants Disclosure 185 pages titled “Royal Bank”
4.	R.1 – Respondent Disclosure 38 pages titled “Royal Bank”