

Central Alberta

Regional Assessment Review Board

Complaint ID#:0262 1242

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 30002910155

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
JAD Development Inc. (via mail only): 34 Highfield CIR SE, Calgary AB T2G 5N5
mgbmail@gov.ab.ca

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
JAD DEVELOPMENT INC.

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: 30002910155
MUNICIPAL ADDRESS: 6870 50 AV, Red Deer
ASSESSMENT AMOUNT: \$1,340,600

The complaint was heard by the Central Alberta Regional Assessment Review Board on the 29th 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 amended to \$1,254,100.

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 single use stand-alone property at 6870 50 AV occupied by an auto parts store. The improvement was constructed in 1974 and is 9,750 square feet (SF) in size. The land area is 26,136 SF. The assessment under appeal was calculated using the income approach to valuation.

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 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.
- [6] 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.
- [7] 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 (159 pages)
 - C2 – Complainant Rebuttal (76 pages)
 - C3 – Complainant Legal Argument (331 pages)
 - R1 - Respondent Disclosure (39 pages)

ISSUES

- [8] The issue to be decided by the Board is should the capitalization rate be 7.75% or 7.25% as assessed.

POSITION OF THE PARTIES**Position of the Complainant**

- [9] 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. The Complainant indicated that the capitalization rate was not equitable to other similar properties and requested that it be amended to 7.75%

CAPITALIZATION RATE:

- [10] The Complainant presented the recent sale of the property at 6816 50 AV, the Telebyte building, a property near the subject property, as an equity comparable. The comparable property was constructed in 1958 as compared to the subject which was constructed in 1974. The comparable property land area is the same as the subject and the improvement is 9,600 SF in size with a 1,002 SF upper area as compared to the subject size of 9,750 SF on the main level without an upper level.
- [11] The comparable property sold on November 2, 2017 for \$1,300,000. Using the 2017 Net Operating Income of \$100,924 as shown on the Respondent's 2017 assessment calculation document, the capital rate would be 7.75%. This is the basis for the Complainant's requested capitalization rate.

Position of the Respondent

- [12] The Respondent also presented aerial photographs of the subject property as well as pictures of the exterior of the property. General comments on the valuation method employed were also presented.
- [13] The Respondent presented a table of all the properties meeting the classification of Assessment Code of Store Retail, Location Code of Retail, Property Type of Store Retail and Property Quality of 3. This table contains a truncated roll number, the general address (street and avenue only), the assessment code (all 202), the location code (all 7), the property type (all 300) the property quality (all 3), the net assessable area which varied from 2,018 SF to 13,472 SF, and the assessment capitalization rate (all 7.25%). This table contained 23 properties.
- [14] The Respondent highlighted that the subject property and the Complainant's equity comparable property are contained in the table.
- [15] The Respondent presented the sale of three properties as comparable to the subject. The first sale of 5 Fir ST was of a property of 2,400 SF at a typical capitalization rate of 4.73%. The second

sale of properties at #4 and #5 7419 50 AV are of 9,206 SF at a typical capitalization rate of 6.13% and the sale used by the Complainant of 6816 50 AV with 10,602 SF at a typical capitalization rate of 7.76%. The mean and median of the second and the third sales were both 6.95% which the Respondent argued supported the assessed capitalization rate of the subject of 7.25%.

- [16] The Respondent stated that the information being presented was presented under the Guide for the Exchange of Assessment Information: Market Value Properties issued by Alberta Municipal Affairs. Where additional detailed information was presented it was because the information was public knowledge likely made public at a previous assessment board hearing.

Complainant's Rebuttal:

- [17] The Complainant highlighted that the first sale presented by the Respondent (3 Fir ST) was included in the table presented by the Respondent as the only property included on Fir ST. The Complainant presented evidence that this property is a small food store that sold at a 4.73% capitalization rate. Based on the current assessment the capitalization rate would have to be 7.53%.
- [18] The Complainant presented evidence that the second sale presented by the Respondent (#4 and #5 7419 50 AV) are condo properties which are assessed differently than freehold properties.
- [19] The Complainant lastly presented the opinion that the sale of the Telebyte building is the best comparable to the subject.

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 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.

Capitalization Rate:

- [28] The Board places no weight on the Respondent's table listing properties assessed the same as the subject property. With the limited information disclosed, the Board was unable to determine if the properties were in fact comparable to the subject property.
- [29] The Board examined the three sales used by the Respondent to support the assessed capitalization rate. The first property was only 2,400 SF, approximately 25% of the size of the subject. The Board noted that small properties sell differently than larger properties; this property sold for \$218 per SF vs the assessed value of the subject at \$137 per SF. The Board finds that this property is not comparable to the subject and places no weight on this sale.
- [30] The Board finds that the second sales comparable presented by the Respondent was the sale of two condo properties. The Board finds that condo properties sell differently than freehold properties as is evident by this property selling for \$175.97 per SF. The Board places no weight on this sale.
- [31] The third sale presented by the Respondent is the same property presented by the Complainants as comparable to the subject. The Board finds that this is the only evidence on which the Board

can make a decision. This is supported by the fact that this property was deemed comparable by both parties. As a result, the Board changes the capitalization rate for the subject property to 7.75%.

DECISION SUMMARY

[32] The Board changes the assessed value to \$1,254,100.

[33] 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.

NO.

ITEM

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