

Complaint ID 0262 1244
Roll No. 30002911735

COMPOSITE ASSESSMENT REVIEW BOARD DECISION

CORRECTION

HEARING DATE: July 30, 2019

PRESIDING OFFICER: W. Johnston

BOARD MEMBER: D. Dey

BOARD MEMBER: A. Gamble

BETWEEN:

ALTUS GROUP LIMITED ON BEHALF OF
JIM PATTISON DEVELOPMENTS LTD.

Complainant

-and-

THE CITY OF RED DEER

Respondent

This correction 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: 30002911735
MUNICIPAL ADDRESS: 6720 52 AV
ASSESSMENT AMOUNT: \$9,762,000

The complaint was heard by the Central Alberta Regional Assessment Review Board on the 30th day of July 2019, at the City of Red Deer, in the province of Alberta.

Appeared on behalf of the Complainant:

Andrew Izard, 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, Lawyer, City of Red Deer

This correction decision arises from a request for a correction brought forward by the Respondent.

DECISION:

The Board makes a correction to include the value for the gas bar equipment. The amended assessed value should have included costed items that were not under appeal and should not have been excluded. Thus, the Board corrects its decision of August 30, 2019 (\$9,118,700) to include the value for the gas bar equipment (\$335,500) for a total amended assessed value of \$9,454,200.

The Board also corrects one word in paragraph 47:

- [47] The Board finds that the vacancy allowance should be **changed** to 3.00% to be comparable to similar properties, that the capitalization rate at 6.50% is supported and that the rental rate of \$14.00 per SF is supported. Neither the capitalization rate nor the rental rate are changed.

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 Save On Foods store situated at 6720 52 AV. The building was constructed in 1997 and is 42,174 square feet (SF) in size and in on 174,240 SF of land. The property is assessed using the income method with a lease rate of \$14.00 per SF, a 1.00% vacancy allowance, \$10.00 operating costs, 2.00% non-recoverable expenses and a 6.50% capitalization rate. The store is classed as a strata (quality) 5 improvement. The property also includes a gas bar.

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.

Legal Argument:

- [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.

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- [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.

Gas Bar Complaint:

- [7] The Respondent objected to the complaint on the gas bar on the basis that it was not shown on the Summary of Testimonial Evidence as required in the *Matters Relating to Assessment Complaints Regulation* (MRAC).
- [8] The Board considered section 9(2)(a) of MRAC and in particular the requirement that the Complainant provide “a summary of testimonial evidence ... and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing ...”.
- [9] The Board reviewed the Complainant’s Statement of Testimonial Evidence (Pages 6 and 7 of the Complainant’s disclosure C1) and determined that it did not contain any reference to the gas bar. The Board determined that pages 25 through 29 of the Complainant’s Disclosure C1, paragraph numbered 8 on page 11 and pages 16 through 20 of the Complainant’s Disclosure C2 plus any other references to the gas bar were excluded from this hearing.
- [10] 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.
- [11] No additional preliminary or procedural matters were raised by any party. Both parties indicated that they were prepared to proceed with the complaints.
- [12] 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 (202 pages)
 - C2 – Complainant Rebuttal (254 pages)
 - C3 – Complainant Legal Argument (331 pages)
 - R1 – Respondent Disclosure (133 pages)

ISSUES

- [13] Should the vacancy allowance be 8.00% or 1.00% as assessed, should the grocery store rental rate be \$12.00 per SF or \$14.00 per SF as assessed, and should the capitalization rate be 7.25% or 6.50% as assessed.

POSITION OF THE PARTIES

Position of the Complainant

- [14] 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.

Lease Rate:

- [15] The Complainant presented the assessment on 15, 6350 67 ST (Real Canadian Wholesale Club) as an equity comparable to the subject. This property was assessed at a lease rate of \$12.00 per SF and was the basis for the Complainant's lease rate request.

Vacancy Allowance and Capitalization Rate:

- [16] The Complainant presented the assessment for the following equity properties in support of the requested vacancy allowance and capitalization rate:

Address	Name/Occupant	Vacancy Allowance	Capitalization Rate
6350 67 ST	Cash Casino	8.00%	7.25%
6751 52 AV	Giant Tiger	1.00%	7.00%
6715 50 AV	Royal Bank (Strip Centre)	8.00%	7.25%
6721 50 AV	CIBC (Strip Centre)	8.00%	7.25%
6704 50 AV	Bank of Nova Scotia	3.00%	6.50%

- [17] In addition, the Complainant presented the sale of 6816 50 AV (the Telebyte Building) in support of the requests. This sale occurred on November 2, 2017 and is assessed with a vacancy allowance of 8.00% and a capitalization rate of 7.25%. The land area of this property is 26,136 SF and the total improvement area is 10,602 SF.

Position of the Respondent

- [18] The Respondent also presented aerial photographs of the subject property as well as pictures of the exterior of the property. General comments on the income approach to valuation and capitalization we also presented.

Vacancy Allowance:

- [19] The Respondent presented the Respondent's 2017 grocery store vacancy analysis. This analysis contained 13 grocery stores varying in leased areas from 1,049 SF to 55,922 SF. The analysis also included the store address and the tenants' name. All stores were occupied resulting in a 100% occupancy rate or a 0% vacancy rate. The Respondent noted that a 1% vacancy allowance was applied in the assessment calculation.

Lease Rate:

- [20] The Respondent argued that there is a difference in quality between the subject property and the Real Canadian Wholesale Club which the Complainant used as their requested lease rate. The difference is manifested in differing finishes and differing ancillary services offered in each store.

[21] The Respondent presented the roll number, address, tenant, quality, building area, market lease rate, actual lease rate (when available) and the lease start and end dates also (when available) from 10 grocery stores. The qualities varied from 4 to 7. The building area varied from 14,734 SF to 55,922 SF. The market (assessed) lease rates were \$12.00 per SF for quality 4, \$14.00 per SF for quality 5, \$15.50 per SF for quality 6 and \$16.00 per SF for quality 7. The four actual lease rates varied from \$12.25 per SF for a quality 4 property to \$16.75 for a quality 6 property.

Capitalization Rate:

[22] The Respondent presented a list of 10 grocery stores, including the subject to demonstrate that all were assessed with a capitalization rate of 6.50%.

[23] The Respondent also presented a table containing the eight retail transactions that occurred in the three years prior to the valuation date. One of those transactions was a post-facto sale (the resale of one of the previous sales) and was presented as a trend indicator. The roll number, address, sale date, sale price, assessment code, description, vendor purchaser transfer net leasable area and typical capitalization rate were presented. The net leasable area varied from 17,896 SF to 36,341 SF. The capitalization rates varied from 5.19% to 7.70% with a mean of 6.20% and a median of 6.27%. Only one of the sales included a grocery component and it sold for a capitalization rate of 5.87% and resold in 02/09/2019 (the post-facto sale) at a capitalization rate of 5.56%.

[24] The Respondent presented the sale of a grocery store in Brooks, AB in support of the assessed capitalization rate. This sale was made at a capitalization rate of 6.50%. This property was sold by Town Centre Properties (Brooks) Inc. to CP REIT Alberta Properties Limited.

Complainant Rebuttal

[25] The Complainant provided evidence that seven of the ten properties in the Respondent's evidence in support of the assessed lease rate were grocery stores in strip centres and were assessed with at a 3.00% vacancy allowance, indicating that is inequitable with the assessment of the subject property.

[26] The Complainant, to support the position that the Respondent's zero percent vacancy allowance for grocery stores was incorrect, noted that the Safeway store in Parkland Mall, vacated in 2016 is still vacant. If this store were added to the Respondent's vacancy analysis it would be other than zero. In the Complainant's opinion, once a space is a grocery store, it remains a grocery store until developed into something different. A picture showing the space vacant in the summer of 2019 was presented.

[27] The Complainant presented evidence that the only sale in the Respondent's list of sales with a grocery component (14,734 SF) is assessed with a vacancy allowance of 5.00% and a capitalization rate of 7.00%. and not with the 6.25% capitalization rate calculated. Further evidence was presented that no other properties in the table were assessed with a 6.25% capitalization rate.

[28] The Complainant presented news releases which indicated that the purchase of the property in Brooks, AB was purchased by the major lessor of the property indicating it may not be a market sale.

Legal Argument:

- [29] 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.
- [30] 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.
- [31] 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

- [32] The Complainant and Respondent 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:

- [33] 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.
- [34] 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.
- [35] 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.
- [36] 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.

Vacancy Allowance and Capitalization Rate:

- [37] No evidence was heard on how the sale of a property in Brooks applies to the City of Red Deer therefore the Board places no weight on that sale.
- [38] The Board found no evidence that the grocery store in the Parkland mall vacated in 2016 was still a grocery store three years later. The Board placed little weight on the argument that once a space is a grocery store it always is a grocery store until it physical becomes something else. The only evidence provided was a photograph some months after the valuation date showing a space vacant to the walls.
- [39] The Board finds that banks are assessed differently than grocery stores and places little weight on those assessments.
- [40] The Board finds that seven of the eight sales presented by the Respondent did not have a grocery component therefore placed no weight in those sales. The sale with a grocery component is included below.
- [41] The Board finds that the Telebyte building is not comparable in size or function to the subject property and places little weight on that sale.
- [42] The Board was left with the assessment of the five properties as comparable to the subject, all grocery stores. These sales were as follows:

Address	Area (SF)	Vacancy Allowance	Capitalization Rate	Strata (Quality)
Subject	42,174	1.00%	6.50%	5
5022 47 AV	28,526	3.00%	7.00%	3
69 Dunlop	26,318	3.00%	6.50%	4
3811 40 AV	14,734	3.00%	6.50%	6
6380 50 AV	42,849	3.00%	6.50%	6
5511 22 ST	42,590	3.00%	6.50%	6

- [43] The Board finds that grocery stores, other than stand-alone grocery stores are assessed with a 3.00% vacancy allowance and the subject, to be assessed equitably with other grocery stores should be assessed with a 3.00% vacancy allowance.

Lease Rate:

- [44] The Board finds that it is common knowledge that there is a difference in quality between the subject and the Real Canadian Wholesale Club property hence they are not comparable.

[45] The Board finds that the Respondent's evidence of the ten grocery store properties that details the different stores, their quality and the assessed lease rates as follows:

Quality	Assessed Lease Rate	Actual Lease Rate
4	\$12.00	\$12.25
5	\$14.00	
6	\$15.50	\$16.00 - \$16.75
7	\$16.00	

[46] The Board finds that this evidence supports the \$14.00 lease rate of the subject property.

Summary of Board's Findings:

[47] The Board finds that the vacancy allowance should be **changed** to 3.00% to be comparable to similar properties, that the capitalization rate at 6.50% is supported and that the rental rate of \$14.00 per SF is supported. Neither the capitalization rate nor the rental rate are changed.

DECISION SUMMARY

[48] The Board makes the correction set out at page 2 of this decision.

[49] Dated at the Central Alberta Regional Assessment Review Board, in the city of Red Deer, in the Province of Alberta this 12 day of September, 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.

On Behalf of: 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

1. A1 – Hearing Materials provided by Clerk (19 pages)
2. C1 – Complainant Disclosure (202 pages)
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