



Complaint ID 0262 1766
Roll No. 30002822785

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: August 22, 2023

PRESIDING OFFICER: G. Sokolan
BOARD MEMBER: R. Irwin
BOARD MEMBER: C. Neitz

BETWEEN:

SERVUS CREDIT UNION LTD
Represented by Altus Group Limited

Complainant

-and-

REVENUE AND ASSESSMENT SERVICES
For 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: 30002822785

MUNICIPAL ADDRESS: 6757 50 AV

ASSESSMENT AMOUNT: \$4,141,900

The complaint was heard by the Central Alberta Regional Assessment Review Board on the 22nd day of August 2023, via video conference.

Appeared on behalf of the Complainant: S. Roth, Agent
A. Izard, Agent

Altus Group Limited
Altus Group Limited

Appeared on behalf of the Respondent: A. Minhas, Property Assessor
S. Gill, Property Assessor
T. Johnson, Assessment Coordinator

City of Red Deer
City of Red Deer
City of Red Deer

DECISION: The assessed value of the subject property is unchanged.

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”].

PROPERTY DESCRIPTION AND BACKGROUND

- [2] The subject property (subject) is a 56,192 square foot (sf) parcel located at 6757 50 AV (Gaetz Avenue) in Red Deer, fronting onto Gaetz Avenue. The parcel is improved with an 8,179 sf building being used as a Stand Alone – Financial Service – Quality 7 bank that was originally constructed in 1988. An office addition was completed in 1999 and interior and exterior renovations/upgrades occurred in 2009. The property is known as the Servus Credit Union (North Gaetz). The property is zoned C4. It was assessed using the Income Approach valuation method at \$4,141,900.

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] Both parties raised the preliminary matter of carrying forward any testimony, argument, questions, and summary statements from the previous file (0262 1765), noting there is a substantial amount of commonality between the two files. The Board agreed to this request.
- [6] Before the Complainant began presentation of its rebuttal, the Respondent identified new issues that had been introduced in the Complainant’s rebuttal submission. Specifically, the Complainant is advancing argument regarding the equity of the subject’s assessment on the basis of assessed value per sf and assessed vacancy rates. These issues were not raised in the Complainant’s initial disclosure and have taken the Respondent by surprise. The Respondent has not had, nor will it have, any opportunity to adequately respond to these arguments, outside of questioning the rebuttal presentation.
- [7] If these arguments had been raised in the Complainant’s initial disclosure, the Respondent would have provided a much more fulsome response submission; instead, it focused only on the rent rate argument included in the Complainant’s initial disclosure. The Respondent asked the Board to strike the entire rebuttal document excepting pages 15 to 18 inclusive which directly challenge one of the Respondent’s equity comparables. The Respondent acknowledged this challenge is properly before the Board in rebuttal.
- [8] In response, the Complainant indicated the Respondent had correctly summarized the two issues before the Board as being 1) the assessment is inequitable with similar competing properties and 2) the assessment is in excess of market value. What they have included in the rebuttal document is standard rebuttal evidence that addresses these two issues.
- [9] The Board heard argument from both parties and recessed to determine its response. In coming to its decision, the Board took guidance from s. 9(2) and 10 of the *Matters Relating to Assessment*

Complaints Regulation, 2018 (MRAC) which provides direction on the disclosure of evidence before Composite Assessment Review Boards, as follows:

- 9(2) If a complaint is to be heard by a composite assessment review board panel, the following rules apply with respect to the disclosure of evidence:
- (a) the complainant must, at least 42 days before the hearing date,
 - i. disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, ... 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, ...
 - (b) the respondent must, at least 14 days before the hearing date,
 - i. disclose to the complainant and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, ... any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, ...
 - (c) the complainant must, at least 7 days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, ... any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.
- 10 A composite assessment review board panel must not hear ...
- (b) any evidence that has not been disclosed in accordance with section 9.

[10] The Board concluded from the second point under “Summary of Evidence” on page 2 of its initial disclosure (Exhibit C1), the Complainant had specifically narrowed the scope of its argument about the subject being over-assessed to the rent rate applied to the property type of Financial Services, requesting it be no higher than \$27.50/sf. In the third point, the Complainant indicated it would support this argument through the provision of equity comparables. Subject to the direction provided in s. 9(2)(i) in *MRAC*, that, to the Board, is the amount of detail the Complainant provided and to which the Respondent responded. Further, to the Board, s. 9(2)(c) provides direction to the Complainant to limit its rebuttal to the disclosure made by the Respondent, as per s 9(2)(b).

[11] A review of the contents of the rebuttal submission indicated the Complainant was intending to argue the Respondent’s comparables did not, in fact, support the subject’s assessment by relying on assessment parameters other than the assessed rent rate. These assessment parameters were identified on the Income (Rate Payer) Reports (income reports) for each of the comparables.

[12] While these income reports had been included in the Respondent’s evidence submission, any reference to these parameters had been redacted. The Respondent indicated this was because evidence and argument on these parameters was not put forward in the Complainant’s original disclosure and removing it helped the Board to focus on the crux of the rent rate argument advanced by the Complainant.

- [13] The Board finds the Complainant's intended rebuttal argument to be outside the scope of its initial evidence and argument. Given the direction provided to the Board in s. 10(b) of *MRAC*, that the Board must not hear evidence that has not been disclosed in accordance with section 9, the Board decided to strike all of Exhibit C3 (Complainant Rebuttal) except pages 1 to the second point under paragraph 3 on page 6 inclusive, pages 15 to 18 inclusive, and pages 38 to 41 inclusive.
- [14] The Board delivered this decision orally to the parties upon returning from recess. The Complainant objected to the decision, referring the Board to paragraph 44 of *Stinchcombe v Law Society of Alberta* 2002 ABCA 106 where it states
- 44 The principles of natural justice demand that a person appearing before a tribunal have the right to make full answer and defence. The audi alteram partem rule, one aspect of the right to make full answer and defence, requires that a fair opportunity be given to "those parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view": Board of Education v Rice [1911]: A.C. 179 at 182, adopted in Irvine v Canada (Restrictive Trade Practices Commission), [1987] 1 S.C.R. at para. 38.
- [15] The Complainant indicated it did not have any knowledge of what comparables the Respondent would have used to defend the assessed rent rate applied to the subject until it received its response to its initial disclosure, preventing it from addressing the inequitable assessment of the subject more fully than it had in its initial disclosure. It also noted the Board had struck that portion of the rebuttal evidence containing the unredacted copies of the income reports.
- [16] By striking this information from the rebuttal submission, the Complainant indicated the Board was denying its ability to make a full answer and defense of the Respondent's evidence. Wanting to give due consideration to the Complainant's objection, the Board again recessed.
- [17] Upon its return, the Board indicated it had not changed its decision and the material previously identified as being struck from the rebuttal remained struck. In coming to this determination, the Board employed the same logic as it had previously. The evidence the Complainant was relying on to make its argument about the inequity of the subject's current assessment was based on assessment parameters it had not included or argued in its initial disclosure. Again, the Board referenced s. 10(b) of *MRAC*, which provides the Board with no option to consider evidence not provided in accordance with s. 9(b).
- [18] No additional preliminary or procedural matters were raised by any party. Both parties indicated they were prepared to proceed with the complaint.

POSITION OF THE PARTIES

Position of the Complainant

- [19] The Complainant submitted the subject's assessed rent rate of \$36.00/sf is inequitable from both a market and equity perspective. It should be assessed with a rent rate no higher than \$27.50/sf.
- [20] The Complainant introduced two lease comparables, being the Royal Bank at 2620 50 AV and the Servus Credit Union at 69 Dunlop Street. These have a median and a mean lease rate of \$27.50, which supports the requested rate for the subject.

-
- [21] Additionally, the Complainant produced a table of 26 leases that commenced within the past three years for a variety of retail properties in several buildings within the North Gaetz Commercial neighbourhood. Lease rates ranged between \$8.50/sf and \$26.00/sf with a median of \$18.00/sf, demonstrating the \$36.00/sf assessed rent rate for the subject is in excess of new leasing in North Gaetz.
- [22] The Complainant also introduced the Servus Credit Union as an equity comparable, supported by its Assessment Summary and Income Statement issued by the Respondent. This identified a rent rate of \$22.00/sf.
- [23] In questioning, the Complainant described the Servus Credit union as presenting as a free-standing bank, even though it is a CRU space in a strip mall. It is the end unit which facilitates a drive through facility and has a parking area in front of the building.
- [24] Additionally, in questioning, the Complainant was unable to substantiate any similarity between its list of recently executed leases in the North Gaetz Commercial neighbourhood and the subject.
- [25] The Complainant asked a number of questions regarding the location of the subject and general characteristics of the area within which the subject is located with the aim of showing the Board the subject is in an inferior location in relation to the Respondent's comparables.
- [26] The Complainant also questioned how the economy of scale break point in the stratification of Stand Alone Quality 7 banks by size was determined, noting that banks over 10,000 sf in this stratification are assessed at a reduced rent rate of \$35.00/sf rather than the \$36.00/sf of banks below 10,000 sf - why, for example, was the break point was not set at 8,000 sf, which would have included the subject.
- [27] Based on this evidence, the Complainant requested the Board to adjust the assessed rent rate of the subject to \$27.50/sf, bringing the total assessment to \$3,146,100. Alternatively, the Complainant requested the Board to reduce the rent rate to \$35.00/sf, reflecting its large area of 8,179 sf, relative to the rest of the Respondent's equity comparables. This would result in a total assessment of 4,024,697.
- [28] In rebuttal, the Complainant dismissed the Respondent's equity comparable at 4900 Molly Bannister Drive. Photos dated October 2022 indicate it was in the process of being repurposed and what remained as of the condition date was a vacant CRU pad site with no bank improvements.

Position of the Respondent

- [29] The Respondent identified two issues in the Complainant's disclosure being: 1) the assessment is inequitable with similar competing properties and 2) the assessment is in excess of market value. It noted the Complainant had provided no written evidence or position regarding type of space, location, physical condition, or quality of the subject, and had submitted two actual lease rate comparables and one equity comparable to support its position. The Respondent concluded the complaint about the assessment is limited to the value assigned to its assessed rent rate.
- [30] The Respondent categorizes the subject as a Stand Alone Bank – Financial Service – Quality 7 that was constructed in 1988, substantial additions and major renovations undertaken in 1999 and in 2009. It is assessed with a rent rate of \$36.00/sf.

-
- [31] The Respondent undertook a “Critical Review” of both the Complainant’s lease and equity comparables. The property at 2610 50 Ave is comparable to the subject. It is a free standing bank of similar physical condition and quality and offers drive-through services. It reports a contract rent of \$35.00/sf effective May 1, 2022.
- [32] The property at 69 Dunlop St is less comparable. It is not a free standing bank; rather it is part of CRU space with a quality rating of Quality 3, in a strip mall with a contract rent of \$20.00/sf effective June 2021. Typically, Quality 3 banks are found in CRU spaces constructed prior to 2000 that have not been significantly renovated.
- [33] The Respondent clarified the difference between these two types of spaces, indicating a freestanding structure is defined as a stand-alone retail structure that is not physically attached to another structure. The CRU space in a strip shopping centre is a space within an attached row of stores or service outlets that are managed as a coherent retail entity with on-site parking usually located in front of the stores. The CRU space has a lower rent rate than that associated with freestanding structures.
- [34] As an equity comparable, the property at 69 Dunlop St is identified as a Quality 3 bank space - a classification that typically represents CRU space as opposed to freestanding space. As noted, such a space is generally older than 2000 and not significantly renovated. Such a space is assessed with a rent rate of \$22.00/sf.
- [35] To support the assessed rent rate, the Respondent submitted a table showing the actual market lease rates for all Quality 7 Stand Alone banks signed in the last three years and reported through the Assessment Request for Information process. The lease rates for the four leases submitted ranged between \$35.00/sf and \$42.03/sf with a median of \$36.39/sf. This data supports the assessed rent rate of \$36.00/sf.
- [36] As well, the Respondent submitted ten equity comparables illustrating freestanding Quality 7 banks between 4,824 and 13,000 sf in size. These comparables are all assessed with a market rent of \$36/sf, except for two which are larger than 10,000 sf. At this size, an economy of scale adjustment is applied, and the assessed rent rate is reduced to \$35/sf.
- [37] It is the Respondent’s position that the subject has been assessed fairly and equitably. It requests the Board to confirm the assessment at \$4,141,900.
- [38] In questioning, the Respondent acknowledged its equity comparable at 4900 Molly Bank DR had been incorrectly assessed as a Freestanding Bank – Quality 7, indicating the Complainant’s characterization of it as a vacant CRU pad with no bank improvements was correct.

BOARD FINDINGS and DECISION

- [39] The Board placed little weight on information the Complainant received as a result of its questions to the Respondent. The Board considered the Complainant’s questions an attempt to introduce testimony to support its rebuttal arguments, which the Board had previously determined were inadmissible. The Board concludes the Complainant was attempting to introduce that information without affording the Respondent the opportunity to formulate a considered response.

- [40] With regard to the evidence actually presented, the Board determines the Complainant did not advance sufficient evidence for the Board to conclude the assessed value of the subject property is incorrect. One of the Complainant's two lease comparables was a freestanding bank, similar to the subject and its lease rate supported the current assessed rent rate. The Board was not convinced the other comparable, being a Quality 3 CRU space in a strip mall, was similar to the subject, despite the Complainant's characterization of it presenting like a freestanding bank. The latter dissimilar property was also submitted as an equity comparable.
- [41] Similarly, the Board finds the Complainant was unable to substantiate how its list of new leases executed in the North Gaetz Commercial neighbourhood were similar to the subject. The list contained no banks, regardless of whether they were freestanding or Quality 7. The Board placed no weight on this evidence.
- [42] The Respondent's evidence, being similar actual lease rates for freestanding Quality 7 banks that commenced within the last three years, and equity comparables showing the same assessed rent rate as the subject, supported the current assessed value.
- [43] The Board did not entertain the Complainant's alternate request to lower the assessed rate to \$35/sf thereby adjusting the 10,000 sf break point where the Respondent applies an economy of scale to the assessed rent rate for freestanding Quality 7 banks. From the discussion that occurred around this request, it was not clear how this break point was determined and/or if it was applied to property types other than freestanding banks. Without understanding the implications of what such an adjustment may have, the Board declined to consider this request.
- [44] Based on the evidence provided, the Board is not persuaded to alter the existing assessed value of \$4,141,900.

DECISION SUMMARY

- [45] The Board finds the original assessed value is CONFIRMED.
- [46] Dated at the Central Alberta Regional Assessment Review Board, in the city of Calgary, in the Province of Alberta this 18th day of September, 2023 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.



Lori Stubbard, Board Clerk
for
Gail Sokolan 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>	<u>NUMBER OF PAGES</u>
1. A.1	Hearing Materials provided by Clerk	21 pages
2. C.1	Complainant Submission	5 pages
3. C.2	Complainant's Disclosure - Evidence	159 pages
4. C.3	Complainant's Rebuttal Submission	41 pages
5. R.1	Respondent's Disclosure – Law Brief	66 pages
6. R.1	Respondent's Disclosure – Evidence	57 pages