

Central Alberta

Regional Assessment Review Board

0262 910 2017
Complaint ID 910
Roll No. 30000540130

COMPOSITE ASSESSMENT REVIEW BOARD DECISION
HEARING DATE: October 24, 2017

PRESIDING OFFICER: W. Jackson
BOARD MEMBER: M. Chilibeck
BOARD MEMBER: A. Knight

BETWEEN:

ALTUS GROUP LTD. (ON BEHALF OF SOUTHPOINTE COMMON) Complainant

-and-

THE CITY OF RED DEER (REVENUE & ASSESSMENT) 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: 30000540130
MUNICIPAL ADDRESS: 2004 50th Ave Red Deer
ASSESSMENT AMOUNT: \$ 45,711,300

The complaint was heard by the Composite Assessment Review Board on the 24th day of October 2017, at The City of Red Deer, in the province of Alberta.

Appeared on behalf of the Complainant: Andrew Izzard, Agent

Appeared on behalf of the Respondent: Maureen Cleary, Assessor
Jason Miller, Assessor

DECISION: The assessed value of the subject property is confirmed at \$45,711,300.

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- [1] The Central Alberta Regional Assessment Review Board [“the Board”] has been established in accordance with section 456 of the *Municipal Government Act*, RSA 2000, c. M-26 [“MGA”], and City of Red Deer Bylaw No. 3474/2011, *Regional Assessment Review Board Bylaw*.

PROPERTY DESCRIPTION AND BACKGROUND

- [2] The subject property is power centre located in the south end of Red Deer; it is zoned as C2A Regional Shopping Centre District and is known as Southpointe Common. The property contains commercial retail units (CRU’s) in a range of sizes as well as associated parking.

PRELIMINARY MATTERS

- [3] The Board Chair confirmed that no Board Member raised any conflict of interest or bias with regard to matters before them.
- [4] Neither Party raised any objection to the panel hearing the complaint.
- [5] In a prior hearing, the Complainant clarified the disclosure packages provided for two roll numbers: roll 30000540155 (Southpointe Plaza), and roll 30000540130 (Southpointe Common) which is the subject property. Each roll number was disclosed in separate packages except for the Complainant’s Rebuttal Argument (473 pages) and the Respondent’s Surrebuttal (71 pages) which apply to both properties.
- [6] The Complainant stated that although there were differences between the properties, the assessment reduction request for the subject property is contingent on the same evidence and argument as was heard for roll 30000540155 (Southpointe Plaza).
- [7] The Parties requested and the Board agreed that to apply the same arguments for roll 30000540155 (Southpointe Plaza) to the subject property, with the opportunity for the Parties to provide additional evidence and argument as required. The Board agreed and confirmed with the Parties that two decisions would be issued.
- [8] The Complainant also raised concerns with the Board related to the nature and content of the property record that was provided by the Respondent during the disclosure process - specifically, that it did not provide the level of detail that is required and is normally provided by other municipalities. The Complainant advised the Board that, after discussion with the Respondent, he was prepared to proceed with the Complaint with the information provided.
- [9] No additional preliminary or procedural matters were raised by any party. Both parties indicated that they were prepared to proceed with the complaint.
- [10] The Board confirmed the submissions of the parties and entered the following Exhibits into the record:

A.1 –Hearing Materials provided by Clerk (26 pages)

- C.1 – Complainant Submission (175 pages)
- C.2 – Complainant Rebuttal (230 pages)
- C.3 – Complainant Rebuttal Argument (473 pages)
- R.1 – Respondent Submission (33 pages)
- R.2 – Respondent Surrebuttal (71 pages)

ISSUES

- [11] The Complainant raised two issues that should, in his view, merit a reduction in assessed value:
- a) Incorrect or Missing Information
 - b) Fair and Equitable Assessment

POSITION OF THE PARTIES

Issue One: Incorrect or Missing Information

Position of the Complainant

- [12] The Complainant advised the Board that further to a MGA s.300 (*Access to summary of assessment*) request made on March 22, 2017, the Respondent did not provide (a) property information including quality and class code details which was available to the Respondent; (b) a number of relevant rental rates; and (c) the property record or assessment explanation summary.
- [13] The Complainant stated that based on the information provided by the Respondent, a property owner would not be able to adequately understand how an assessment was prepared or calculated. Further, the Complainant argued that the information provided by the Respondent as part of disclosure varied significantly from the record provided following a s.300 request - specifically, the absence of information related to type codes or quality codes found in the s.300 response.
- [14] The Complainant also noted that the disclosure material provided by the Respondent contains redacted areas including the identity of CRU's used in the Respondent's argument. The Complainant stated that having the redacted information would have assisted in analysing the subject property's assessment and in the preparation of evidence for the hearing.
- [15] The Complainant stated that the limited information provided by the Respondent did not meet legislated requirements; however the Complainant stated that he was not asking the Board to remedy that issue. The Complainant also suggested that the Board may not have adequate information to weigh the evidence.

Position of the Respondent:

- [16] The Respondent stated that the original authorized agent for the subject property (AEC International) requested information pursuant to s. 299 of the MGA and was provided with the assessment details, including a breakdown of rental rates, on Feb. 9, 2017.

[17] The Respondent stated that:

(a) a MGA s. 300 request was made for the subject properties by Altus Group on March 22, 2017;

(b) Altus Group was sent a standard “assessment detail report” showing the calculation of the assessment value, including the average weighted rental rate applied to each tenant type, on March 24, 2017;

(c) Altus Group was not the Authorized Agent for the subject properties at the time of the MGA s. 300 request and therefore was not entitled to receive the property’s complete assessment details; and

(d) Altus Group did not make a formal MGA s. 299 request relating to the subject property.

[18] The Respondent advised that a preliminary hearing was held on August 11, 2017, the decision of which allowed the new agent (Altus Group) time to review subject properties and submit a complaint package. However, the Complainant did not provide a new evidence package by the September 11, 2017 submission date and did not communicate with the Respondent despite emails sent and attempted telephone calls by the Respondent.

[19] The Respondent argued that MGA s. 299 does not require the provision of rental rate studies and that this is supported by an Edmonton Composite Review Board decision exhibit R2 p. 37(ECARB 00504).

[20] The Respondent spoke to the redacted information, stating that when providing assessment information to property owners, the municipality is considerate of the need to protect confidentiality and requested that the Board give full weight to rental rate studies that were included in exhibits R1 & R2 regardless of the redaction.

Issue Two: Fair and Equitable Assessment

Position of the Complainant

[21] The Complainant argued that the assessment of the subject property is neither fair nor equitable when compared to the assessment of comparable properties including an adjacent power centre. In particular, the Complainant provided evidence that the rates used in the assessment of the retail units within subject property are different from the rates applied to other similar power centre properties.

[22] The Complainant argued that retail units within the same building are assessed as different classes, noting a rental rate difference of up to \$10/sf (a 20% difference) for units that have the same functionality, age, access, location and size characteristics, both within the subject property and within a nearby power centre. In support of this argument, the Complainant referred the Board to the photos on p. 145 of exhibit C2 and to the direct capitalization chart for the subject property on p.16 of exhibit R1. The Complainant concluded that this difference in value constitutes an unfair and unequitable situation.

[23] The Complainant also argued that the Respondent’s use of data up to 10 or more years old in its analysis is contrary to standard fee simple estate valuation, including exhibit C2 p. 93-102 the Alberta Municipal Affairs (2016) MINISTERIAL ORDER NO. MAG:026/16 - The 2016 Alberta Assessment Quality Minister's Guideline and exhibit C2 p. 122 - 124 the Alberta Assessors Valuation Guide for Shopping Centres. The Complainant stated that 2016 leases should not be grouped with 2004 leases; and therefore the Respondent’s rate calculations should not be given any weight.

- [24] The Complainant stated that typical market rates are normally determined by observing market activity during the 36 month period preceding the valuation date which in this case would be July 1, 2013 to July 1, 2016, and advised that this is common practice in other municipalities, including Calgary.
- [25] The Complainant highlighted three leases signed within the 36 month interval (Alberta Motor Association in Southpointe Common - \$21.20, Sport Check in Southpointe Plaza - \$17.60, and Winners in Southpointe Plaza - \$13.00) and argued that these leases provided adequate basis to adjust the assessment rates.
- [26] The Complainant also argued that the pre-2013 rental rates utilized by the Respondent do not reflect the 2016 economic climate in Red Deer. In support of this, the Complainant referred to two major industrial operations that had either vacated large portions of their space or downsized considerably in the 2016 valuation year, and cited an e-mail from Avison Young (exhibit C2 page 39) confirming increasing industrial vacancies and declining industrial property values in the Red Deer area.
- [27] The Complainant also cited a number of mid-2016 Alberta Government (Treasury Branch and Finance) publications and newspaper articles describing the struggling economy, declining economic output and growing unemployment among a variety of economic indicators (exhibit C2 pages 13-38). In addition, the Complainant took issue with the Respondent's city population forecasts, noting a population decline between 2015 and 2016 (100,807 to 99,832) and the City's failure to reach it's 2016 projected population.
- [28] The Complainant argued that the methodology used by the Respondent results in the overassessment of small spaces and provided the Board with a list of 14 retail units in the 0 – 3,000 sf category located in Southpointe Plaza (the subject), Southpointe Common (immediately north of the subject), and Gaetz Avenue Crossing (nearby) which collectively had a median lease rate of \$26.00/sf.
- [29] The Complainant stated that the lease rates applied in the 20,000sf plus category exceed the typical rents as of July 1, 2016 and argued that the lease rates for Sport Check (\$14.10/sf) and Winners (\$13.00/sf) located within the subject property are more reflective of the current market rate.
- [30] The Complainant noted that a \$14.00/sf rate had been applied to a Michaels store and to "a vacant Future Shop location" in Gaetz Avenue Crossing. The Complainant noted that Bed Bath and Beyond and Best Buy, both located in the subject property were specific examples of properties being penalized by the Respondent's methodology.
- [31] The Complainant stressed that all of the comparable lease rates presented were based on leases which started after July 1, 2013. On this basis the Complainant requested that the assessed rates for the three identified size categories be adjusted as follows:
- 0 - 3000 sf space type: \$24.50/sf instead of \$25.77
 - 3001 – 6000 sf space type: \$22.00/sf instead of \$22.93
 - 20,000 plus sf space type: \$14.00/sf instead of \$17.50
- and that the total valuation be reduced to \$43,366,000

Position of the Respondent

- [32] The Respondent advised the Board that assessed rates for each of the retail units within power centres were determined by analyzing and stratifying all leases within the City according to tenant type and rental rate and that significant difference in lease rates were found throughout Red Deer.
- [33] Given that, In order to be fair and equitable, the Respondent stated that class codes were established for each size range. A single rate was then applied to all properties within each class code.
- [34] The Respondent argued that Red Deer, being a mid-sized city, has limited market data information in the power centre class, and therefore takes all lease dates into account in the determination of the market lease rates for the class, and that the stratification allows the lease rates to be generated by utilizing comparable properties.
- [35] The Respondent argued that the MGA allows each municipality to determine an appropriate approach to simulate the market and that the approach the City of Red Deer uses results in a fair and equitable assessment.
- [36] The Respondent advised that if the market rate for the 0 – 3,000/sf classification was to be calculated based on all power centre properties across the city using only the three-year period prior to the evaluation date, it would result in a median rate of \$28.75/sf.
- [37] The Respondent noted that the evidence presented by the Complainant relating to the health of the local economy focuses on the manufacturing (industrial) sector and not the retail (commercial) sector.
- [38] The Respondent provided a series of 7 lease study tables (exhibit R I pages 20-22) showing the data used to compile the assessment rates, and argued that lowering the assessment rates for the subject properties in the 0 – 3,000, 6000 – 20,000 and 20,001+ sf classes would result in a gross inequity and a loss of fairness towards the other power centres in the municipality.
- [39] In summary, the Respondent argued that the information presented supports the position that each of the subject's CRU spaces is being assessed fairly and equitably and requests the Board to confirm the assessment at \$45,711,300.

BOARD FINDINGS and DECISION

ISSUE ONE

- [40] The Board reviewed the Complainant's presentation and evidence regarding the provision of information pursuant to s.299 and s.300 of the MGA, as well as the redacted business names in the Respondent's Disclosure, and concluded that little weight should be given to the Complainant's argument that the property owner was placed at a disadvantage in the preparation of an assessment complaint for the subject property.
- [41] The Board finds that the Complainant (a) was able to determine how the property was assessed based on the information that was provided pursuant to information requests despite concerns related to inadequate quality rating detail, and (b) the Complainant received additional information during the disclosure process that enabled the presentation of detailed rebuttal arguments based on that material.
- [42] The Board is of the opinion that a municipality, in providing information pursuant to MGA s. 299(1)(b), is entitled to interpret and implement provincial freedom of information and

legislative provisions as it sees appropriate. Further, while the Board finds that the Respondent did not provide specific information about the criteria used to establish the assessment, it did provide sufficient detail to allow the Complainant to develop comprehensive arguments related to fair and equitable assessment, which in turn, disproves the suggestion that the Board may not have been provided with adequate information to adjudicate this complaint.

ISSUE TWO

- [43] At issue is whether the assessment of subject property is fair and equitable in relation to similar properties in the municipality.
- [44] The Board is of the opinion that equity as intended in the legislation relates to properties throughout the municipality and not solely within a single property such as a power centre. The Board therefore gives more weight to the Respondent's position and finds that its approach to the preparation of assessment is fair and equitable and meets mass appraisal and legislative requirements.
- [45] Further, the Board notes that in order to determine market rates, the Respondent demonstrated that they analysed rental rates based on specific space categories and subsequently by class and quality over the entire municipality. The Complainant focused solely on a limited number of properties over a narrower time period for each space category - an analysis that yielded different results.
- [46] The Board accepts the Respondents position that a City-wide analysis utilizing class and quality data is both fair and equitable and, therefore the Board gives little weight to the Complainants limited number of comparable properties as justification to adjust the assessment for the subject property.
- [47] The Board notes that rental rates are contingent on the economic factors at play at the time a lease is signed and may also be impacted by negotiation elements, and therefore concludes that the assessed rates follow the rental rates reasonably closely. The Board finds that the subject property is not assessed in excess of actual market rates.
- [48] The Board is of the view that equity as referenced in s. 293 of the Municipal Government Act is intended to relate to the entire municipality rather than one specific property.
- [49] The Complainant argued that the assessment was unfair and inequitable because it relied on leases that were signed outside of the Complainant's suggested three year period. The Board determined that the MGA does not address what date range is to be used and that while the 2016 Alberta Assessment Quality Ministers Guidelines enacted by Ministerial Order on September 1, 2016 do address a three year period, this is an element related to the information required in association with a Municipal Affairs audit and not directly related to assessment preparation.
- [50] Further, the Board notes that the Guidelines also state that an auditor may request sales outside of the three year period. The Board finds that a municipality is not bound by a three-year period and has the discretion to utilize a wider range of lease dates.

The Board finds that there is insufficient evidence to support the Complainant's arguments and adjust the subject property's 2016 assessment.

DECISION SUMMARY

[51] The assessment is confirmed at \$45,711,300.

[52] Dated at the Central Alberta Regional Assessment Review Board, in the City of Red Deer, in the Province of Alberta this 28 day of November, 2017 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.



Presiding Officer

This decision can be appealed to the Court of Queen's Bench. 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 within 60 days of being notified 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. A.1 –Hearing Materials provided by Clerk (26 pages)
2. C.1 – Complainant Submission (175 pages)
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