Wood Buffalo TRIBUNALS
Composite Assessment Review Board

Board Order 2020-008

IN THE MATTER OF A COMPLAINT filed with the Regional Municipality of Wood Buffalo Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being chapter M-26 of the revised statutes of Alberta 2000.

BETWEEN:

Altus Group Limited – Complainant

- and -

Regional Municipality of Wood Buffalo (RMWB) – Respondent

BEFORE:

Members:
George Zaharia, Presiding Officer
Alex McKenzie, Member
Nayef Mahgoub, Member

Staff:
Anita Hawkins, Clerk

BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

[1] The hearing was convened on October 28, 2020 in the Regional Municipality of Wood Buffalo in the Province of Alberta to consider a complaint about the assessment of the following property:

Assessment Roll Number	50500960
Civic Address	302A Parsons Creek Drive Fort McMurray
Owner	LREIT Holdings 44 Corporation
File Number	ARB 20-031

[2] The subject property includes two buildings that are four-storey wood framed walk-up apartments located in the Parsons Peak Neighbourhood of the Timberlea area of Fort McMurray. Their year built/effective year built is 2007 and they are in average condition with

no major exterior or interior renovations having taken place. The apartment buildings have one hundred ninety-two suites comprised of one bachelor, twelve one-bedroom, and one hundred seventy-nine two-bedroom suites. Due to its effective age, the subject property is included with strata 3 properties.

[3] The subject property is valued using the income approach with the 2020 assessment set at $19,046,400 ($99,198/door).

PROCEDURAL MATTERS

[4] The CARB derives its authority to make decisions under Part 11 of the *Municipal Government Act*, R.S.A. 2000, c. M-26.

[5] The parties confirmed that they had no objections to the composition of the Board. The Board confirmed it had no bias in relation to this matter.

[6] The hearing was conducted by way of video conference. The parties consented to the use of this technology.

PRELIMINARY MATTERS

[7] There were no preliminary matters.

ISSUES

Issue identified on the complaint form	Assessment Amount	Requested Value
An Assessment Amount	$19,046,400	$17,400,000

MERIT MATTERS

Position of the Complainant

[8] It was the position of the Complainant that the assessment of the subject property was in excess of its market value, citing that the reduced assessment should reflect the actual rates achieved. Specifically, the vacancy rate is understated and the rental rate for the two-bedroom suites should be reduced from the applied typical rental rate of $1,700 to $1,600 per month.

[9] The Complainant provided the rent roll for the subject property as of December 31, 2019. The median rental rate for one-bedroom suites was $1,500/month and the median rental rate for two-bedroom suites was $1,600/month.

[10] The Complainant reported that there were 118 occupied units and 71 vacant units for a vacancy rate of 38%.

[11] The Complainant provided a revised proforma that involved revising three values: 1) applying a rental rate of $1,600/month to the 179 two-bedroom suites, 2) applying a vacancy rate of 38%, and capitalizing the effective gross income with a 7.0% cap rate. This resulted in a reduced assessment of $17,426,769.

[12] The Complainant provided a statement of income and expenses for a nine-month period ending September 30, 2019, stating that the assessed effective gross income (EGI) shown on the Respondent's detailed report for the subject property was significantly higher than the $2,101,828 shown on the income statement. The Complainant acknowledged the 50% expense ratio as accurate, but pointed out that even by reducing the rental rate for two-bedroom suites from $1,700 to $1,600/month this still resulted in an over assessment as the EGI of $2,265,480 still exceeded the actual income of $2,101,828.

[13] The Complainant highlighted some excerpts from a Court of Appeal for British Columbia between the Assessor for Area 9 (Vancouver) and Bramalea Limited. In a Supreme Court decision, in Jonas v. Gilbert (1881), 5 S.C.R. 356, Chief Justice Ritchie laid down the law in Canada concerning the taxpayer's right to equitable treatment in the assessment process.

The Chief Justice wrote:

> "*Unless the legislative authority otherwise ordains, everybody having property or doing business in the country is entitled to assume that taxation shall be fair and equal and that no one class of individual, or one species of property, shall be unequally or unduly assessed.*" Chief Justice Ritchie emphasized that "*a power to discriminate must be expressly authorized by law and cannot be inferred from general words. It is, of course, apparent that the principle so stated must apply with at least equal force where discrimination might otherwise occur between taxpayers within a class.*"

The BC Court of Appeal wrote:

> "*..... the taxpayer has two distinct rights: (i) a right to an assessment which is not in excess of that which can be regarded as equitable; and (ii) a right not to be assessed in excess of actual value. It follows that it is not proper for the Board to sustain an assessment in excess of actual value simply because it bears a fair and just relation to assessments on other similar properties. Where the Board is of the view that the assessed value of property under appeal is too high, and cannot reasonably be regarded as at 'actual value', then it ought to reduce the assessment even though it cannot reduce the assessments on the other similar properties which are not the subject*

of appeal".

[14] The Complainant highlighted some excerpts from a decision of the Court of Appeal of Alberta citation: Strathcona (County) v. Alberta Assessment Appeal Board, 1995 ABCA 165 where the Court wrote:

> *"....two fundamental principles of municipal taxation in Canada, firstly, that property be assessed on the common basis of fair actual value so that the cost of municipal government will fairly be borne by taxpayers inter se in proportion to the relative values of their assessable properties and, secondly, that the assessor shall determine the fair actual value in a manner that is fair and equitable with the level of value prescribed for use in determining the fair actual value of other like improvements in the municipality."*[15]In conclusion, the Complainant requested the Board reduce the assessment of the subject property from $19,046,400 to $17,400,000.

[15] In conclusion, the Complainant requested the Board reduce the assessment of the subject property from $19,046,400 to $17,400,000.

Position of the Respondent

[16] The Respondent provided an overview of its disclosure.

a) Property assessments are prepared in accordance with the requirements of the M*unicipal Government Act*, RSA 2000, cM-26, (MGA) and the *Matters Relating to Assessment and Taxation Regulation*, 2018, Alta Reg 203/17, (MRAT). The legislation requires the municipality to prepare assessments that represent market value by application of the mass appraisal process.

b) Property assessments represent an estimate of the value of the fee simple estate in the property as it existed on December 31, 2019 and would have realized if it had been sold on July 1, 2019 on the open market and under typical market conditions from a willing seller to a willing buyer.

c) Mass appraisal is the legislated methodology used for valuing individual properties, and involves 1) stratifying properties into groups of comparable properties, 2) common property characteristics are identified for the properties in each group, and 3) a uniform valuation model is created for each property group.

d) A single property appraisal is the valuation of a particular property as of a given date, while mass appraisal is the valuation of many properties as of a given date, using standard procedures and statistical testing.

e) The multi-residential group consists of properties with eight or more dwelling units.

f) The income approach used to value the subject property best reflects the typical actions of buyers and sellers when purchasing income-producing properties.

g) For the 2020 tax year, there are 85 apartment buildings in the RMWB from which 47 responses were received to the annual request for information (RFI) requests.

h) The apartment buildings were grouped into three distinct stratifications.

Strata	Age Categories	# of Properties
1	Pre 1980 Eff. Year Built	33
2	1980 - 1999 Eff. Year Built	15
3	> 2000 Year Built	37

i) Typical Market Rent is the rent currently prevailing in the market for properties comparable to the subject property. Current market rents are used to form the basis of the valuation as opposed to actual rents, because in many cases actual rents reflect historical revenues derived from leases negotiated before the valuation date. In determining potential gross income, the assessor is not bound by the contractual rent between the landlord and tenant but must determine rental income based on what is typically paid in the market at the time of valuation.

j) Vacancy Allowance is a deduction from the potential gross income for typical vacancy, assuming current market conditions and typical management. Vacancy losses are best described as an allowance for vacant space. These allowances are usually expressed as a percentage of potential gross income. It is determined for each market area by analyzing reported vacancies from the owner's annual financial statements. The vacancy allowance includes an allowance for tenant inducements. The following table illustrates the vacancy allowances utilized for the 2020 Assessment valuation for the three strata:

Strata	Vacancy %
1	27%
2	32%
3	36%

k) Expense Ratio is a deduction from the effective gross income (EGI) for typical expenses related to the property taxes, utilities, management, insurance, etc. Depreciation and mortgage interest are not allowable expenses. The expense ratios used for the 2020 Assessment valuation for the three strata:

Strata	Expense Ratio
1	55%
2	50%
3	50%

[17] The Respondent provided three charts based on the three strata that had been developed to categorizes the multi-residential properties in the municipality. For the subject property which falls into strata 3,

a) the typical rents used were $1,300 for a bachelor suite, $1,400 for a one-bedroom suite, and $1,700 for a two-bedroom suite,
b) the expense ratio was 50.0%, and
c) the vacancy rate was 36%.

[18] The Respondent summarized the Complainant's position which was that the subject property should be valued using actual income as at December 2019, and expense data based on a September 2019 expense statement. Alberta Legislation requires the use of mass appraisal, the assessment be an estimate of market value, and reflect typical market conditions for similar properties.

[19] The Respondent provided a chart showing the 2020 assessments of all strata 3 multi-residential properties that ranged from $78,759/door to $150,639/door resulting in an average of $101,906/door and a median of $95,065/door. The subject property's assessment at $99,198/door falls between the average and median values and falls within the range of all of the assessments of the strata 3 properties.

[20] The Respondent commented on the Complainant's requested reduced assessment stating that the request would result in a per door assessment of $88,541. This value would be substantially lower than the rest of the predominantly two-bedroom complexes in the strata and in fact lower than complexes with predominantly one-bedroom or bachelor units, making this valuation completely inequitable.

[21] The Respondent stated that the onus of proving the incorrectness of the assessment rests with the Complainant to provide sufficiently compelling evidence upon which a change to the assessment can be based.

[22] In conclusion, the Respondent requested the Board to confirm the 2020 assessment of the subject property at $19,046,400.

REBUTTAL

[23] The Complainant summarized its rebuttal evidence and provided arguments regarding the shortcomings of the Respondent's approach to determining the assessment of the subject property.

a) The Respondent's strata only reflect comparability in the year of construction. Since the rental rates of only fifteen properties were provided, these properties should not determine the typical rental rate for the remaining thirty-seven properties in the strata.

b) There is a 67% range in rental values resulting in properties being either over or under assessed. The Complainant suggested that more strata should be considered to create equity and precision for property assessments.

c) Given the lack of comparability, actual rental rates should be considered until more information regarding comparable properties is available.

d) The Complainant suggested that the valuation guide parameters should be reviewed and the fairest form of assessment relating to the subject property should be discussed.

[24] With regards to the equity chart provided by the Respondent, the Complainant disagreed that properties have the same rental rate based on the year of construction, arguing that the strata was too large for assessment purposes, creating an inequity and a false market value to the properties. The Complainant stated that with rental rates varying nearly 70% in a strata, there is evidence that these properties are not equitable.

[25] The Complainant referenced two excerpts from the Principles of Assessment I, highlighting: "elements of comparison" that may impact property value; and "income approach conclusion" addressing the accuracy and reliability of an income analysis depending on the availability of market data and the degree of comparability of the subject and comparable properties.

[26] The Complainant referenced the Alberta Assessors Association Valuation Guide highlighting "Determining Market Rents as of the Valuation Date" that listed three guidelines to determine the current market rent: 1) rent rolls, 2) compare the rental rates derived from the actual rent rolls to rents for similar tenants in other similar properties, and 3) analyze existing leases and interview owners and tenants to determine what the current rent on the space should be.

DECISION

[27] It is the Decision of the CARB to confirm the 2020 assessment of the subject property at $19,046,400.

REASON FOR DECISION

[28] The support for a reduction in the assessment of the subject property provided by the Complainant was based on the subject property's rent roll, an income and expense statement, and the actual vacancy. However, using the rent roll and the vacancy rate experienced by the subject property is contrary to the requirements of the *Matters Relating to Assessment and*

Taxation Regulation (MRAT) that mandates that the assessment of a property must be prepared using mass appraisal, must be an estimate of the value of the fee simple estate in the property, and must reflect typical market conditions for properties similar to that property. The Board found that just providing site specific values did not meet legislated requirements.

[29] The Complainant argued that the Respondent derived the typical rental rates based upon the rental rates of only fifteen properties out of thirty-seven properties in the strata, suggesting that it was inappropriate to apply a rental rate and vacancy allowance based on only fifteen properties. The Board found this position puzzling in that the Complainant was wanting the Board to reduce the assessment of the subject property based on the information of only one property – that being the subject property.

[30] The Complainant provided court decisions inferring that the assessment of the subject property was not equitable.

a) In a Court of Appeal for British Columbia decision addressing a case involving the Assessor for Area 9 (Vancouver) and Bramalea Limited, the Justices referenced a Supreme Court of Canada decision from 1881 where Chief Justice Ritchie wrote: "*….everybody having property or doing business in the country is entitled to assume that taxation shall be fair and unequally or unduly assessed*".

b) From the same court decision, the Justices wrote: "*…., the taxpayer has two distinct rights: (i) a right to an assessment which is not in excess of that which can be regarded as equitable; and (ii) a right not to be assessed in excess of actual value.*"

c) In a Court of Appeal decision of the Court of Appeal of Alberta citation: Strathcona (County) v. Alberta Assessment Appeal Board, 1995 ABCA 165, the Justices wrote:

"….two fundamental principles of municipal taxation in Canada, firstly, that property be assessed on the common basis of fair actual value so that the cost of municipal government will fairly be borne by taxpayers inter se in proportion to the relative values of their assessable properties and, secondly, that the assessor shall determine the fair actual value in a manner that is fair and equitable with the level of value prescribed for use in determining the fair actual value of other like improvements in the municipality."

[31] The Board found that the assessment of the subject property was determined taking into consideration the directions of the Courts that basically stipulated the taxpayer having two rights: a right to an equitable assessment and a right to an assessment not in excess of actual

value.

[32] The Complainant had provided excerpts from the Principles of Assessment I and the Alberta Assessors Association Valuation Guide, both documents addressing the need to compare elements that may impact property value and the need to collect information to determine typical values. The Board found that the Respondent had prepared the assessment of the subject property consistent with legislated requirements that properties are stratified into groups of comparable properties (age categories and building types) and that a uniform valuation model was created for the subject property's group utilizing a request for information sent to all property owners to determine typical values which were then applied to each property to derive their assessed values.

[33] The Complainant provided no other evidence to support its position that the assessment of the subject property was not equitable compared to other comparable properties.

[34] The Respondent provided an outline of its methodology to assess properties in its municipality. The Board found that the methodology used by the Respondent was consistent with legislated requirements.

[35] The Respondent provided the information that it had collected from property owners through the RFI process to establish the typical values (rents, vacancy rates, and expense ratios) that were used to calculate the assessment of the subject property. The RFI process is mandated by the MGA at section 295(1) that states "*A person must provide, on the request by an assessor, any information necessary for the assessor to carry out its duties and responsibilities……*" Although not every property owner responded to this RFI, the Respondent received sufficient responses to establish the typical values used in calculating the assessed values for the 2020 assessment year.

[36] The Respondent had grouped the multi-residential apartment buildings into three groups based on their ages. Of the eighty-five multi-residential apartment buildings, thirty-seven properties fell into strata 3 based on their year built being 2000 or newer. The subject property fell into this strata. Of the thirty-seven properties, the Respondent received responses to its requests for information from fifteen property owners that formed for the basis of the typical rents, expense ratio, and vacancy rate applied to all the thirty-seven properties in that strata. The Board found that the Respondent had complied with legislated requirements that mandate how assessments of properties in Alberta are determined.

[37] In selecting the typical rents, expense ratio, and vacancy rate to be applied to the subject strata, the Respondent had selected the median values that resulted from the requests for information that for rents were lower than the averages and chose the higher vacancy rate to

be used in calculating the assessments. The Complainant had no issue with the applied 50% expense ratio. The Board found that the typical rental rates and vacancy rate reflected the information provided by the property owners and the typical rates were determined and applied to the properties in that strata as mandated by legislation.

[38] The Respondent had provided the 2020 assessments of all strata 3 multi-residential properties that ranged from $78,759 to $150,639/door with the subject property's assessment at $99,198/door falling within the range of all of the assessments of the strata 3 properties. The Board found the assessment of the subject property equitable compared to the other properties in the same strata.

[39] The Board was persuaded that the 2020 assessment of the subject property at $19,046,400 was fair and equitable. Section 467(3) 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 business in the same municipality.*" The Board found that the assessment of the subject property was equitable compared to similar properties.

[40] In coming to its conclusion, the Board has reviewed carefully the provisions of the *Municipal Government Act* ("MGA"), the *Matters Relating to Assessment Complaints Regulation* ("MRAC") and the *Matters Relating to Assessment and Taxation Regulation* ("MRAT").

DISSENTING OPINION

[41] There was no dissenting opinion.

[42] The decision of the Composite Assessment Review Board is final and binding on all parties, subject only to appeal to the Court of Queen's Bench on a question of law or jurisdiction with respect to the decision in accordance to section 470 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 26th day of November 2020.

FOIP ACT s.17(1)

[redacted]

George Zaharia, Presiding Officer

APPENDIX A

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB

Exhibit Number	Description
C1	Complainant's Brief (144 pages)
C2	Complainant's Rebuttal (144 pages)
R1	Respondent's Brief (32 pages)
R2	Law and Legislation Brief (58 pages)

APPENDIX B

REPRESENTATIONS

Person Appearing	Capacity
James Newhouse	Representative for the Complainant
Julie Peyton	Assessor, Regional Municipality of Wood Buffalo

APPENDIX C

LEGISLATION

MUNICIPAL GOVERNMENT ACT R S A 2000 Chapter M-26

s 1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Duty to provide information

295(1) A person must provide, on request by an assessor, any information necessary for the assessor to carry out the duties and responsibilities of an assessor under Parts 9 to 12 and the regulations.

(2) The Alberta Safety Codes Authority or an agency accredited under the Safety Codes Act must release, on request by an assessor, information or documents respecting a permit issued under the Safety Codes Act.

(3) An assessor may request information or documents under subsection (2) only in respect of a property within the municipality for which the assessor is preparing an assessment.

(4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of designated industrial property, under section 492(1) about an assessment if the person has failed to provide any information requested under subsection (1) within 60 days from the date of the request.

(5) Information collected under this section must be reported to the Minister on the Minister's request.

Decisions of assessment review board

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

(a) the valuation and other standards set out in the regulations,
(b) the procedures set out in the regulations, and
(c) the assessments of similar property or businesses in the same municipality.

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION, 2018

Mass appraisal

5 An assessment of property based on market value

(a) must be prepared using mass appraisal,
(b) must be an estimate of the value of the fee simple estate in the property, and
(c) must reflect typical market conditions for properties similar to that property.