

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460(4).

**between:**

***Altus Group Ltd., COMPLAINANT***

**and**

***The City of Calgary, RESPONDENT***

**before:**

***L. Lundgren, PRESIDING OFFICER***

***P. Charuk, MEMBER***

***R. Deschaine, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>037181013</b>
<b>LOCATION ADDRESS:</b>	<b>3520 RESEARCH WY NW</b>
<b>HEARING NUMBER:</b>	<b>59582</b>
<b>ASSESSMENT:</b>	<b>\$17,010,000</b>

This complaint was heard on the 29<sup>th</sup> day of June, 2010 at the office of the Assessment Review Board located at 4<sup>th</sup> Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *C. Van Staden*

Appeared on behalf of the Respondent:

- *K. Moore*

**Board's Decision in Respect of Procedural or Jurisdictional Matters:**

There were no procedural or jurisdictional matters.

**Property Description:**

The subject property is located at 3520 Research Wy NW and is comprised of two buildings. Building #1 is assessed with three office spaces: 9,360 square feet, 58,950 square feet, and 1,115 square feet for a total area of 69,425 sf. Building #2 which was missed in last year's assessment is assessed as a pad tenant with 2304 sf. The balance of the office space is tax exempt space and not under complaint.

**Issues:**

- 1.What is the correct assessable area?
- 2.What is the correct vacancy allowance for the subject?
- 3.What is the correct pad area (Bldg #2)?
- 4.What is the correct pad rent (Bldg #2)?

**Complainant's Requested Value:** Original request \$15,350,000

**Board's Decision in Respect to Each Matter or Issue:**

- 1,What is the correct assessable area?

The Complainant submits that the subject is assessed using an incorrect area. In support of this position, the complainant presented ARB 0254/2009-P which determined that the correct area is 69,425 square feet. The Complainant assumed that the total area of 69,425 sf was for the Imperial Oil space and the food court. The Complainant also assumed that the pad tenant and the food court are the same space. During the hearing the Complainant became aware that the pad tenant identified by the Respondent is Building #2 with an area of 2304 sf assessed using a rental rate of \$24 per sf. The Complainant disputes the use of Building #2 as a pad tenant and is of the opinion that the building is used for storage.

The Respondent submitted that the area of 69,425 sf has been used to calculate the assessment. When the three office spaces of 9,360 sf, 58,950 sf, and 1,115 are added together,

they total 69,425sf. The additional space of 2304 sf is for Building #2 which was not assessed last year because it was not reported on the ARFI returned by the property owner. Evidence of the existence of this building is shown on the aerial photograph. The Respondent maintains that the correct area is used for the assessment.

With respect to the matter of correct assessable area, the onus is on the Complainant to establish that the area is incorrect. This was not done. The Board finds that the correct area of 69,425 sf, is part of the calculation, and the balance of the area is attributable to Building #2. Matters of correct assessable area should be addressed in advance of the hearing; and if the parties cannot agree on the correct assessable area the Board will make a determination. No attempt was made to resolve this matter prior to the hearing date.

## 2. What is the correct vacancy allowance for the subject?

The Complainant originally requested a vacancy allowance of 10% and then revised the request to 7.5%. The Complainant also advanced the argument that the vacancy rate is a "physical condition" and should be considered as of December 31, 2009 and not the valuation date of July 1<sup>st</sup>, 2009. The following third party information was provided in support of the requested vacancy allowance of 7.5%: Catalyst report that suburban office vacancies (citywide) are at 15.4% and are expected to increase over 2010 to 17.0%; CBRE numbers show that the overall office vacancy rate in Calgary at the end of 2009 was 15.7%; Avison Young Q2 2009 reports citywide office vacancy at 9.3% including sublease space; Avison Young Q2 2009 reports suburban north's vacancy rate at 11.5%. As well, Avison Young is reporting that there are currently five office buildings under construction in the north end of Calgary containing approximately 364,000sf. These buildings are: Harvest Hills Office Park A (Fall 2009), Cambrian Professional Centre I (Fall 2009), Cambrian Professional Centre II (Spring 2010), Cambrian Professional Centre III (Fall 2010), and WinSport Canada Tower (Spring 2011). These buildings are currently 58% pre-leased.

The Complainant also provided rebuttal evidence in the form of a vacancy rate study for office buildings in the NW quadrant of the city which shows an overall vacancy rate of 3.91%. If the vacant space in Harvest Hills and Cambrian Professional Centres are included the resultant vacancy would be closer to 8.5%, and the Complainant is only asking for a vacancy allowance of 7.5%.

The Respondent presented the 2010 City of Calgary Northwest Suburban office Vacancy Study which results in a vacancy rate of 3.61%. The subject and all other office buildings in the northwest quadrant are assessed using a vacancy allowance of 6% which is greater than the average northwest vacancy rate.

The Respondent notes that the Complainant is using third party reports to support its request for a 7.5% vacancy allowance, but there is no foundation for any of the reported vacancy rates. It is not known which properties were analyzed, nor how they were stratified.

Respecting the issue of vacancy allowance, the Board finds the best evidence of vacancy rates in the NW quadrant to be the Respondent's vacancy rate study which shows a vacancy rate of 3.61%.

The Complainant's vacancy rate study showing a rate of 3.91% is consistent with the Respondent's study and the differences are accounted for, in part, by the stratification of the properties. Accordingly, the vacancy rate of 6% used to prepare the assessment is confirmed.

Finally, the Complainant's argument that the vacancy rates as of December 31, 2009 should be used in the preparation of this assessment because *vacancy* is a condition, demonstrates a lack of understanding of the plain reading of the legislation. In the Matters Relating To Assessment And

Taxation Regulation, Part 1 Standards of Assessment, Section 2(c) states that an assessment of property based on market value must reflect typical market conditions for properties similar to that property. Section 3 of the regulation states that any assessment prepared in accordance with the Act must be an estimate of a property on July 1<sup>st</sup> of the assessment year. When these sections are read together, it is clear that the assessment must be prepared using typical factors, for example, vacancy rates, and must be an estimate of value of the property on July 1<sup>st</sup>. These sections of the regulation should not be confused with section 289 (2)(a) of the Municipal Government Act which states that each assessment must reflect the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,.. Section 289 (2)(a) of the Act establishes the condition date of December 31 for the purpose of recognizing the state of repair or completion of an improvement. This section is also used to recognize the condition of the land, for example, contaminated land.

3.What is the correct pad area?

The Complainant confused the pad area of 2304 sf for Building #2 with the food court area. As a result of clarification during the hearing, the Complainant now knows that the pad area is for a separate building.

The Respondent confirmed that the pad area is for Building #2.

The Board finds insufficient evidence to alter the assessed area.

4.What is the correct pad rent?

The Complainant stated that the pad area (Bldg #2) cannot possibly be used as office space and is most likely storage space which should be assessed using a rental rate of \$6 per square foot.

The Respondent is not certain but believes Building #2 is used for office space, in which case the \$24 rate should be confirmed.

The Board finds insufficient evidence to alter the rental rate.

**Board's Decision:**

The property assessment is confirmed at \$17,010,000.

MAILED FROM THE CITY OF CALGARY THIS 13 DAY OF July 2010.

  
L. Lundgren  
Presiding Officer

*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*