

**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:

Paul G. Petry, PRESIDING OFFICER

Don Steele, MEMBER

Ike Zacharopoulos, MEMBER

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

ROLL NUMBER:	048046007
LOCATION ADDRESS:	1935 – 32 Avenue N.E.
HEARING NUMBER:	57360
ASSESSMENT:	\$8,120,000 (Taxable)

This complaint was heard on 5 day of July, 2010 at the office of the Assessment Review Board located at Floor Number three, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant: G. Worsley and B. Bickford

- **Altus Group Ltd. – Complainant**

Appeared on behalf of the Respondent: D. Zhao

- **The City of Calgary - Respondent**

Property Description and Background

The subject property is a 63,944 sq. ft. retail/office building situated in the Airway district at 1935 – 32 Avenue N.E. The subject has been assessed using the capitalized income approach at a value of \$8,840,000 less exempt space valued at \$715,000 leaving the taxable assessment at \$8,120,000.

Issues:

1. Should the vacancy allowance of 8% be increased to recognize chronic vacancy in the subject?
2. Has the Assessor correctly determined the amount of space that is office vs retail space within the subject?
3. What is the correct rental rate that should be applied to the office and retail space in the subject?
4. Should the typical operating costs of \$8.50 be increased to recognize higher operating cost in the subject?
5. Should additional space be exempted from the taxable portion of the assessment for the subject?

Other issues were raised in the Complainant's complaint filed with the Assessment Review Board (ARB) on March 5, 2010. The only issues that the parties brought forward in the hearing on June 8, 2010 before the Composite Assessment Review Board (CARB) are those referred to above, therefore the CARB has not specifically addressed any of the other issues initially raised by the Complainant in their initial complaint.

Board's Decision in Respect of Each Matter or Issue:

Issue 1 – The correct vacancy allowance for the subject is the typical allowance of 8%.

Issue 2 – The correct square footage of space to be assigned as office space is 45,445 sq. ft and for retail 18,489 sq. ft.

Issue 3 – The correct lease rate for office space is \$12.00 per sq. ft. and for retail space \$14.00 per sq. ft.

Issue 4 – The appropriate allowance for operating costs for the subject is the typical \$8.50 per sq. ft.

Issue 5 – The number of sq. ft. of exempt space is not changed nor has the value attached to that space changed. The value of exempt space remains at \$715,000.

Overview of the Positions of the Parties

Findings and Reasons:

Vacancy

The Complainant argued that the subject has historically experienced vacancy in the range of 10% and higher since 2007. July 2009 the vacancy was at 12.12% and by year end it was at 17%. The Complainant also brought forward third party reports by Avison Young, CB Richard Ellis and Colliers to show that these organizations are recognizing vacancy in suburban office above 10%.

The Respondent argued that higher than typical vacancy should only be recognized if actual vacancy exceeds the typical rate for a protracted period of three years or more. In this case the vacancy in 2009 appears to be slightly higher but that is not a reason to react by increasing the rate prematurely from the typical rate of 8%.

The CARB noted that the Complainant did not produce any specific study of comparable property vacancy in the N.E. but relied on third party reports only. The CARB found that in this case a couple of snap shots where vacancy exceeds that norm is insufficient evidence on which to base an adjustment. The evidence advanced by the Complainant was found not to be compelling and therefore the Board has decided not to adjust the vacancy rate from the typical 8%.

Office / Retail Space Allocation

Both parties provided their respective versions as to which space should be determined as retail vs office. The CARB noted and with the agreement of both parties that the front half of the lower floor would appear to be the better retail space with exposure to 32 Avenue. The evidence however did not break out the space for this section of the building. The Respondent had used 32,366 sq. ft as office space in deriving the assessment however through questions it appeared that this split may not be accurate. The better evidence was the lease summary provided by the Complainant which attempted to delineate what space is office vs retail based on the tenancy.

Having analysed the lease summary the CARB determined that two of the spaces which the Complainant had designated as office should actually be retail. They were the LA Weight Loss space at 2661 sq. ft. and the Ag Professional Hair Products at 1021 sq. ft.

After these adjustments are made the Board has determined that 45,455 sq. ft. will be treated as office space and 18,489 sq. ft. will be treated as retail space.

Rental Rates

In this case the Respondent had used both a \$15.00 rate and a \$14.00 for retail space in the subject property. The Complainant took the position that the retail space is the same and a differential is not supported. Neither party presented any market leasing activity, however in the Board's view the Assessor should have brought forward something more compelling to support the two rates it used in developing the assessment.

The CARB sees no reason to apply differing rates to the retail space and therefore will apply the \$14.00 rate in determining the final value of the subject.

Operating Costs

The Complainant argued that the operating costs experienced by the subject are considerably above the \$8.50 per sq. ft. used by the Assessor. In support of its contention the Complainant submitted that the operating costs submitted with their assessment information to the City shows actual cost for the year end December 31, 2008 to be 12.43%. The Complainant requested that the Board apply operating cost of \$11.50 when calculating the vacancy short fall allowance for the subject.

The Respondent indicated that there is insufficient evidence to increase the operating cost above the typical cost of \$8.50.

The CARB finds the Complainant's evidence to be weak and unconvincing. The Complainant referred to only one year of operating cost for the subject and submitted no information as to which costs may be charged back to the tenants. The CARB had no leases to review and no way of comparing the cost shown on the Complainant's list with what may be typical. The Complainant simply did not make out its case in this regard and therefore the CARB has not made any adjustment to the operating costs used by the Assessor of \$8.50.

Additional Exemption

The Complainant provided a rent roll as of December 29, 2009 to show that Calgary Progressive Lifestyles, an organization which the Assessor has already recognized as being exempt, had leased additional space of some 2681 sq. ft. as of October 2009 and therefore this space should be included as being exempt. Further an organization called Christian Research Institute has leased 512 sq. ft of space and it was argued that the space occupied by this organization should also be exempt. To support the validity of exempt status for this organization the Complainant introduced a page from their web site which appears to be part of their marketing of objectives and an approach used to solicit funds from the public. This document refers their tax-exempt status under section 501(c)(3) of the Internal Revenue Code. In answer to the Board's questions concerning whether this organization had taken initiatives to pursue their potential exemption through the City of Calgary; the Complainant did not know but argued that it should not be necessary as there is clear entitlement under section 362 (1)(k) of the Act without any requirement of paper work or application. If the City did not recognize these cases for exemption before the subject complaint was filed then it certainly should have acted to correct their exemption status once the complaint was filed in March 2010.

The Respondent indicated that the information provided by the Complainant upon request in May 2009 does not show additional space being occupied by the Calgary Progressive Lifestyles group but in any event the assessment department would not act on such information. Each organization

seeking exemption or changes to their exemption must make their requests through the appropriate department of the City. It appears that the City of Calgary may not have received any requests from these organizations or that evidence would have been introduced. The Assessor asked the Board not to alter the exemption status of these originations based on the minimal information before the CARB.

First with respect to the Calgary Progressive Lifestyles expansion of space the CARB has no knowledge as to which provisions of the Act or the Regulations were used to grant exempt status for the current space of 4,773 sq. ft. The Board was not informed as to what the additional space is being used for and whether that space would also qualify under the same provisions. The Complainant did not know whether the Organization had made a request to have the additional space exempted or not and therefore there may be no dispute at all once this is done. In the case of the Christian Research Institute, again we do not know if a request for exemption was made to the City. The web site information does not address the purpose to which the subject space is being used and such information is required. The position taken by the Complainant is that there need not be any request to the City of Calgary to expand the exemption in the case of the Calgary Progressive Lifestyles organization or for exemption by the Christian Research Institute for the specific space they occupy. The CARB views this position as ludicrous. The municipality has the responsibility to assess all properties within its bounds unless certain properties are exempt. The municipality has no way of knowing which properties may be eligible for exemption under the Act or the Community Organization Property Tax Exemption Regulations unless such a organization comes forward with their request and the required evidence to prove the circumstances which warrant such exemption. The CARB is not prepared to intervene in this process unless it can be shown that the organization has sought exemption through the municipality and has been denied. Therefore the CARB is not prepared to make any changes at this time to the exemption status of the space occupied by these two organizations.

Decision

Based on a careful review of all the evidence and argument advanced in this case and in light of the findings and reasons above the CARB reduces the assessment of the subject property to \$8,350,000. The value of the unchanged exempt space in the amount of \$715,000 reduces this value to an assessment of \$7,630,000 for the taxable portion of the property.

It is so ordered.

No costs to either party.

DATED AT THE CITY OF CALGARY THIS 21st DAY OF July 2010.



Paul G. Petry
Presiding Officer

PP/kc

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.*