

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER

K. Coolidge, MEMBER

E. Reuther, 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:

ROLL NUMBER:	068036706
LOCATION ADDRESS:	138 4 Ave SE
HEARING NUMBER:	58496
ASSESSMENT:	13,010,000

This complaint was heard on the 29 day of July, 2010 at the office of the Assessment Review Board located at Floor Number Three, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *Darryl Genereux*
- *Giovanni Worsley*

Appeared on behalf of the Respondent:

- *Dan Lidgren*
- *Bernice Tang*

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

Issue: Can a Board Order be presented in argument without disclosure?

The Complainant presented a recently issued CARB decision in rebuttal argument. The Respondent objected to its inclusion, stating that it had not been previously disclosed. The order, ARB 0660/2101-P was issued July 27, 2010 and dealt with a complaint regarding the assessment of a downtown B class office building. The Respondent objected on the grounds that this evidence had not been disclosed in accordance with the regulations, while the Complainant stated that board orders are not evidence and are not required to be disclosed. In any event it would have been impossible to disclose it within the timelines of the regulation as it had only been issued two days previously.

Decision and Reasons:

The Board considered this matter and determined that information regarding the Board Order should be allowed. The relevant legislation is Alberta Regulation 310/2009, Matters Relating to Assessment Complaints Regulation (MRAC) which specifies rules for disclosure:

8(2) If a complaint is to be heard by a composite assessment review board, 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, including a signed witness report for each witness, and 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, and
 - (ii) provide to the respondent and the composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;
- (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, including a signed witness report for each witness, and 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, and

- (ii) provide to the complainant and the composite assessment review board an estimate of the amount of time necessary to present the respondent's evidence;
- (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, including a signed witness report for each witness, and 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.

9(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.

The Regulation does not define "evidence", and the Board looked to commonly accepted definitions. Evidence is described in detail in the book "Practice and Procedure Before Administrative Tribunals" by Robert W. Macaulay, Q.C., and James L.H. Sprague:

Evidence is the information that is presented to a decision-maker to establish the facts on which the decision-maker is to base his or her decision. The information may establish those facts directly or indirectly. If the thing in question is not aimed at establishing a fact - then it is not evidence. (Chapter 17, page 17-1)

Case law and tribunal decisions do not prove facts, they are introduced for other reasons such as to illustrate legal principles, or to persuade a panel to decide something the same way another panel did under a purportedly similar fact scenario. They are therefore not evidence subject to the disclosure rules of the Regulation. Nevertheless, the Board recognizes that the spirit of Sections 8 and 9 of MRAC is to ensure a fair process whereby the parties are not ambushed, and the requirement for disclosure of written argument supports this view. However, in the situation at hand, the Board Order was issued only two days before the hearing date, and could not have been disclosed within the timelines of MRAC. Under the circumstances, reference to the Order in summary statements and argument without disclosure is clearly not based on a desire to ambush.

Further, while the Board is not bound by precedent, members are expected be aware of current decisions, and by having the Complainant refer to it in a hearing, the Respondent is provided with an opportunity to speak to it and argue its relevance to the matter at hand.

Property Description:

The subject is an eight storey office building constructed in 1979 comprising 66,729 sq. ft. office space, 4565 sq. ft. of main floor retail and 44 underground parking stalls. It is located on a 11,050 sq. ft. parcel on the southern boundary of the Chinatown area of downtown, Zone DT9. It is classified as a C+ building and assessed on the income approach based on \$22/sq. ft. office, \$23/sq. ft. retail, \$3,375/annum parking with office and retail vacancy at 10% and 8% respectively. Operating costs of \$15 and vacancy shortfall of 2% are applied and the resulting net operating income is capitalized at 8.5% to arrive at the full assessment value.

A portion of the building is leased by the Calgary Immigrant Women's Association, which is exempt from taxation. The income attributable to the exempt tenancy is calculated on a

separate roll number and deducted from the full assessment value to arrive at the amount under appeal.

Issues:

The Complainant identified the following issues on the Complaint form:

- The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Alberta Regulation 220/2004.
- The use, quality, and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirement of Section 289(2) of the Municipal Government Act.
- The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.
- The assessment of the subject property is in excess of its market value for assessment purposes.
- The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.
- The classification of the subject premise is not fair, equitable, or correct.
- The information requested from the municipality pursuant to section 299 or 300 of the Municipal Government Act was not provided,
- The municipality has failed to recognize the tax-exempt status of one or more tenants, of the subject property, based on the definitions outlined in section 362 and 364 of the Municipal Government Act.
- This Notice is filed based on information contained in the Assessment Notice as well as preliminary observations and information from other sources. Therefore the requested assessment is preliminary in nature and may change.
- The assessment market analysis has insufficiently and incorrectly considered, and adjusted most recent property sales.
- Account for a variety of risk factors the capitalization rate should be increased to 9%
- The assessed vacancy allowance applied to the subject property should be increased to 15%
- The assessment has neglected to account for various elements of obsolescence.

At the hearing, the issues argued and considered were:

1. The assessment does not reflect the tax-exempt status of one of the tenants in the building (the Crown) and does not accurately reflect the area leased by another tax-exempt tenant (the Calgary Immigrant Women's Association)
2. The rate applied to the fitness area is inequitable with that of other fitness facilities in similar properties.
3. The vacancy allowance applied to the subject property should be increased from 10% to 15%
4. The capitalization rate should be increased to 9%
5. The rental rate for the offices should be decreased to \$16.50 from \$22
6. The total assessment is in excess of its market value in view of the March 2007 sale of the subject and the change in market conditions between the sale date and the July 2009 valuation date.

Complainant's Requested Value: \$7,400,000 revised to \$8,631,382 at the hearing.

Board's Decision in Respect of Each Matter or Issue:**Issue 1: Tax exempt status of two tenants****Complainant's position:**

The Complainant submitted a Summary of Tenants in the subject property as of July 1, 2009. There were two listed as having a taxation status of "Exempt":

Tenant Name	Suite	Area
Calgary Immigrant Women's Association	100A	335
Calgary Immigrant Women's Association	100B	2012
Calgary Immigrant Women's Association	100C	400
Calgary Immigrant Women's Association	200	9709
Calgary Immigrant Women's Association	310	3452
Calgary Immigrant Women's Association	355	4191
Calgary Immigrant Women's Association	820	1063
Her Majesty the Queen	600	8628

The total exempt retail area is 2,747 sq. ft. and the total exempt office area is 27,043 sq. ft. for a total exempt area of 29,790 sq. ft. The assessment includes an exempt component of 2,684 sq. ft. retail and 14,867 sq. ft. office. The Complainant submitted that this should be corrected. He noted that the CIWA had already been accepted by the Respondent as tax exempt, and the Crown is exempt under Section 362(1)(a) of the Act.

Respondent's position:

The Respondent did not argue whether the CIWA and the Crown are exempt. He stated that there are procedures in place for applying for tax exempt status which requires application in the year prior to the tax year, and that it is not appropriate to request exemptions during the appeal process. He asked that the procedures in place be respected and the additional exempt space not be granted.

Decision and Reasons:

The Act provides for certain entities to be exempt from taxation:

362(1) The following are exempt from taxation under this Division:

(a) any interest held by the Crown in right of Alberta or Canada in property;

...

(n) property that is ...[(i) through (v)]

and that meets the qualifications and conditions in the regulations and any other property that is described and that meets the qualifications and conditions in the regulations;

...

364(1) A council may by bylaw exempt from taxation under this Division property held by a non-profit organization.

The CIWA is not exempt under 362(1)(n)(i) through (v) of the Act. Part 3 of Alberta Regulation

281/98, the Community Organization Property Tax Exemption Regulation provides for certain other property to be exempt from taxation subject to conditions:

16(1) A municipality must grant a non-profit organization an exemption from taxation in a taxation year in respect of property referred to in section 15 that is held by the organization if

- (a) the non-profit organization makes an application for an exemption to the municipality by September 30 of the year preceding the taxation year and supplies the municipality with the following by November 30 of the year preceding the taxation year: ...

The Board accepts there are procedures in place to request an exemption that involves the requirement to apply for the exemption in the year prior to the taxation year. The Board agrees with the Respondent that the area of the exemption should be the area applied for, not the area occupied at July 1 of the taxation year. Therefore the additional space leased by the CIWA at July 1, 2009 should not be exempt until the following taxation year.

The Act exempts the Crown under 362(1)(a) without procedural requirements. However, in the case at hand, the only evidence submitted was the Summary of Tenants as of July 1, 2009 and a rent roll dated March 1, 2009 submitted with the Assessment Request for Information (ARFI). Both documents made reference to "Her Majesty the Queen" without detail whether it was in right of Alberta or Canada. The Summary of Tenants showed that Suite 310 was occupied by CIWA in July 2009 and by Her Majesty the Queen in March 2009. Evidence such as lease documents that would show the actual tenant, amount of space and lease term were not provided. Accordingly, the Board was unable to ascertain whether that space should be exempt under 362(1)(a).

Accordingly, the amount of exempt space in the assessment was not adjusted.

Issue 2: Rate applied to fitness area

Complainant's position:

The Summary of tenants includes Suite 200A with 1,869 sq. ft. labelled as space type "Fitness". This is the recreational space that is provided as an amenity for the tenants, which the landlord pays for. He presented a commercial lease detail for July 1, 2009 for Suite 200A described as "Fitness Centre" which showed zero rent on the space. It is assessed at the same rate as the offices, \$22/sq. ft.

The Complainant presented Income Approach valuation details for other B and C class office buildings in the downtown. For each one, the Sub Component listed as "Recreational Space" carried market rental rates of \$10 to \$12:

Property Name	Municipal Address	Area in sq. ft.	Market Net Rental Rate
Tower Centre	131 9 Ave SW	603	10.00
Lancaster Building	304 8 Ave SW	3,386	12.00
Western Canadian Place	701 8 Ave SW	18,460	10.00
Fina Building	736 8 Ave SW	2,704	10.00
Norcen Tower	715 5 Ave SW	15,520	10.00

The Complainant submits that the \$22 per sq. ft. applied to the fitness space is inequitable and that 1,869 sq. ft. in the subject building should also be assessed at \$10 per sq. ft.

Respondent's position:

The rent roll provided in the Assessment Request for Information (ARFI) shows the fitness space leased by the property owner at \$32 per sq. ft. therefore the \$22 assessment is reasonable.

Decision and Reasons:

The evidence provided is insufficient to reduce the rate applied to the fitness space. There were no photographs submitted to support the Complainant's position that it was finished to a lower standard and lacked windows. The rent roll showed that the space had a \$32 lease rate applied to "tenant services". Without evidence that this space was inferior and could not be leased at market rates, or evidence that the comparable space in the other buildings were also leasable at market rates but assessed at \$10, the Board could not determine whether the \$22 was inequitable with the other properties.

Issue 3: Vacancy allowanceComplainant's position:

There is increasing competition coming into the marketplace. The completion of several new buildings is affecting the market, and others still under construction will create backfill problems with existing buildings when their tenants vacate in favour of the new buildings. Vacancy surveys show the Bow as fully leased but do not account for the 1.7 million sq. ft. of inventory that will be vacated. The vacancy rate applied should be forward looking, as a buyer will pay based on present value of future benefits, and it is well known that vacancies will rise rapidly once these buildings come on stream. The ERBC/EUB building, with 230,000 sq. ft. of space, will become 100% vacant when the Board moves to Centennial Place in November 2010. This has been public knowledge since summer 2009. The Complainant presented a vacancy study for Class B buildings that showed 2009 vacancy at 13.77%, but increased to 20.77% including the EUB building at 100% vacant.

Vacant Class B buildings will draw on the C market with competitive forces coming into play. The vacancy rate applied to the assessment is 10%. The survey shows that a 15% rate is more appropriate. The ARFI returns are based on information in March or April. Circumstances had changed between the report date and the valuation date. In the past the Respondent used reported rates from both the second and third quarter, but this year is only using Q2 rates.

Respondent's position:

The Respondent presented a summary of Quarter 2 vacancy rates for Average (Class C) from various industry reports: 9.59% - CRESA, 8.4% - Avison Young, 8.6% - Colliers and 11.78% - Barclay. The actual reported vacancy from ARFI returns is 7%, therefore the 10% applied is reasonable. He noted the 2009 ARFI return for the subject reported zero vacancy.

Decision and Reasons:

Based in the market reports, the 10% vacancy allowance is reasonable. While the ARFI reported zero vacancy, the evidence showed that 4,088 sq. ft. in the subject building was vacant

on July 1, 2009. This represents about a 6% vacancy, which is within the range of the market reports and also supports the 10% applied. The Board is of the opinion that the vacancy rate used for assessment should be the current rate, not the rate that might be in effect at some future date when new buildings are completed. The knowledge that vacancy rates will be higher in the future could increase the risk associated with the income stream and impact the capitalization rate, however without knowing what the absorption rate will be it cannot be stated that the future vacancy will be the amount of new space to be completed, nor can it be stated how it will affect vacancy rates in which classes of buildings.

Issue 4: Capitalization rate

Complainant's position:

For assessment purposes, valuing an unencumbered fee simple estate presumes the entire subject building is vacant and available to generate current market rents. Therefore cap rates on sales for assessment purposes should be derived by estimating net income for the property using market rents. The indicated cap rates of sales from 2003 were plotted on a graph and showed that on average cap rates in 2003 were in the 8%, dropped in 2006 to about 7.25% and then increased to 8% by the valuation date with further increases projected.

There were no recent sales of B and C class buildings. The Complainant based his capitalization rate analysis by interpolating sales of class A buildings. There were two sales of class A office buildings in the downtown area within the analysis period: Plains Midstream Plaza, which transferred on October 1, 2007 for \$91,481,728 and Gulf Canada Square on December 18, 2007 for \$383,000,000. The sale prices were adjusted to account for non-market leases in place at the time of sale. The sale of 8 West on February 15, 2010 for \$41,450,000 is post-facto but can be included for trending purposes. The indicated cap rates from these sales based on market rents are:

Plains Midstream	7.69%
Gulf Canada	8.03%
8 West	8.27%

This supports a cap rate of 8% for Class A at the valuation date. The requested cap rate of 9% is based on a historical assessment hierarchy whereby Class B is ½% higher and Class C is 1% higher than Class A. The Complainant presented a recent decision whereby the cap rate for a B class building was raised to 9%, and quoted from the Board Order: "in light of the significant amount of sublease vacancy in the market, the evidence of approximately 3 million sq.ft. of new office space ... coming on the market in the near future, the evident decline in current market rents...; the selection of a capitalization rate at the lowest end of the range at 8% appears to be very aggressive."

Respondent's position:

There were no valid sales in the Downtown Office category in the current valuation period, July 1, 2008 to July 1, 2009. Considering dated sales in determining the cap rate was ruled out due to the significant change in market conditions and investor perception since they occurred. The cap rates used for the assessment were based on the general consensus in the real estate industry that the downtown office market had been in decline over the previous year, and as a

result, the cap rates applied to the 2010 assessment were increased by ½% over the previous year in the AA, A and B classes, C was increased by ¾ and D by ¼%. The Respondent noted that the Q2 reports are based on industry-polled investor expectations as at midyear, 2009 and showed only the early stages of what appears, in a post facto market, to be a more serious decline. The report capitalization rates at Q2, and the rates applied to the 2009 and 2010 assessments were:

Class	2009 cap rate	2010 cap rate	Q2 Colliers	Q2 CBRE	Q2 Altus Insite
Superior (AA)	6.50	7.00	7.0 - 7.5	6.75 - 7.25	7.20
Excellent (A)	7.00	7.50	7.25 - 7.75	7.50 - 8.00	
Good (B)	7.25 - 7.50	8.00	8.0 - 8.50	8.75 - 9.25	8.10
Average (C)	7.50 - 7.75	8.50	N/A	N/A	
Poor (D)	8.75	9.00	N/A	N/A	

The 8.5% for Class C applied to the assessment is reasonable based on investor perception at the valuation date and should be maintained. With respect to the Board Order quoted by the Complainant, it was a file with another agent and the evidence presented was completely different, therefore the conclusions in that Order could not be applied to the case at hand.

Decision and Reasons:

The evidence shows that it was generally known in July 2009 that the market was in decline and a large inventory of soon to be available space would result in increased vacancy and risk to the income stream. No Class C cap rates were reported, however the range for Class B office buildings was 8.0% to 9.25% with an average of 8.45%. The Board is of the opinion that a more reasonable cap rate based on that range for Class B would be 8.5%. There was no dispute that Class C should be ½% more than B, therefore a 9.0% cap rate is appropriate for the subject.

Issue 5: Office rental rate

Complainant's position:

The rental study by the City includes buildings that are in a much better location than the subject. The subject is in an inferior location on the edge of Chinatown, and zoned DC while other properties are zoned CM-2. The Telus building, across the street from the subject was dropped several classes and the rental rate reduced by \$4/sq. ft. due to location. Leases in the subject building that expired just after the valuation date were signed for rates between \$11 and \$16 per sq. ft. The Complainant presented a Class C rental analysis with 38 leases with start dates between Feb 2009 and April 2010. He stated that the leases in 2010 actually started in December 2009 but had a free rent period. The average of the leases is \$15.41, the median is \$15.00 and the weighted average is \$16.51.

The City's range of lease rates for DT2, 3, and 9 are \$14 to \$22 for Class C. The requested amount of \$16.50 is within that range and supported by the rental analysis.

Respondent's position:

The majority of the leases presented in the Complainant's rental analysis are post-facto. The leases signed within the valuation date support the rates used in the assessment. Leases in the

subject building with commencement dates in 2008 are at \$32. A lease in Asia Pacific Centre commencing in May 2009 is at \$26. The Respondent presented a Class C rental analysis with 32 leases with start dates between July 2008 and June 2009 with an average of \$23.32, a median of \$24.50 with a weighted average of \$23.21.

Decision and Reasons:

In a declining market, leases signed in the early portion of the valuation period would be expected to be at higher rates than those signed in the latter portion and subsequent to the valuation period. The Board considered the leases presented and reviewed those in close proximity to the subject, specifically those in the subject, the Herald Annex, the Tower Centre and the Asia Pacific Centre. There were 14 leases with a start date between October 2008 and August 2009. Post facto leases negotiated subsequent to July 2009 were not considered. The average of the 14 leases was \$18.17. The trend was clearly to a decline in lease rates, and the Board is satisfied that an \$18 rate is a reasonable approximation of the market lease for the subject at the valuation date.

Issue 6: Sale price of subject

Complainant's position:

The total assessment including the exempt portion is \$16,757,000. This is in excess of its market value in view of the sale of the subject for \$15,000,000 in March 2007. The sale date was close to the peak of the market, and there were no long-term leases at the time of sale, therefore the sale price would be expected to reflect the fee simple interest. The median decline in the market is 18% since the sale date.

Respondent's position:

The Respondent did not specifically address this issue other than to object that it had not been specifically mentioned in the Reasons for Complaint. He agreed that it had been disclosed in the Complainant's package.

Decision and Reasons:

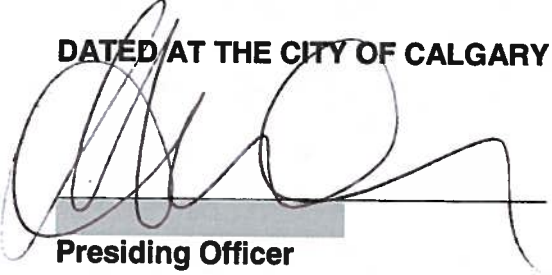
The Board is satisfied that the sales price of the subject is properly within the issue of market value specified in the Complaint form. The Board agrees that general market conditions would not support an increase in value as of the valuation date from the sale date. The rent roll submitted with the ARFI report supports the Complainant's contention that there were no long-term leases in place that would have negatively affected the sale price, and accordingly the Board accepts that the sale price was a reasonable reflection of market value for assessment purposes as of the sale date in March 2007.

There was no evidence submitted to support the Complainant's statement that the median decline in the market since the sale date was 18%. There was also no evidence that the subject would have the same decline in value as the median of the market. Therefore, other than general agreement that the assessment should not have increased relative to the sale price, the Board could not draw any valuation conclusion based on the sale price.

Board's Decision:

The complaint is allowed, in part, and the assessment is reduced to \$13,957,000 less \$3,420,324 exempt portion for a total assessment of \$10,530,000 based on \$18/sq. ft. office rental rate and 9% capitalization rate and no changes to any other parameters.

DATED AT THE CITY OF CALGARY THIS 13th DAY OF August 2010.


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.*