

**CITY OF CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of a complaint filed with the City of Calgary Assessment Review Board pursuant to Part 11 of the *Municipal Government Act*, Chapter M-26, Revised Statutes of Alberta 2000 (the Act).

BETWEEN:

Altus Group, COMPLAINANT

and

The City Of Calgary, RESPONDENT

BEFORE:

***J. Krysa, PRESIDING OFFICER
A. Zindler, MEMBER
S. Rourke, MEMBER***

A hearing was convened on July 6, 2010 in Boardroom 8 at the office of the Assessment Review Board, located at 1212 - 31 Avenue NE, Calgary, Alberta in respect of the property assessment prepared by the assessor of the City of Calgary, and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	201506052
LOCATION ADDRESS:	7661 10 Street NE
HEARING NUMBER:	59142
ASSESSMENT:	\$15,740,000

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a 274,596 square foot (sq.ft.) parcel of I-B land, improved with 3, one storey, multi tenant suburban office buildings constructed in 1999/2000, containing a total of 78,201 sq.ft., and known as Centre Eight Ten.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The Assessment Review Board derives its authority under Part 11 of the Act. At the commencement of the hearing the Respondent raised an objection with respect to the Complainant's rebuttal document; specifically to the inclusion of capitalization rate evidence in Exhibit C3 – Addenda "A" which was previously undisclosed, and not at issue in the Complainant's disclosure of evidence. It was argued that entering this evidence at the rebuttal stage of disclosure, barred the Respondent from addressing it in his submission, and as such it should be disallowed.

The Complainant submitted that there was no issue with the capitalization rate applied to the subject property; that the materials were only to rebut an anticipated assertion of the Respondent that the vacancy of the subject was in part reflected in the selection of the applied capitalization rate.

The Board allowed the rebuttal document on the condition that it be used only to confirm that atypical vacancy was not reflected in the selection of the applied capitalization rate.

PART C: MATTERS / ISSUES

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment amount
4. an assessment class

At the commencement of the hearing, the Complainant withdrew matter 4, and indicated that the evidence and submissions would only apply to matter number 3, an assessment amount. The Complainant set out 14 grounds for the complaint in Section 5 of the Complaint form, however, the Complainant stated only the following issue, condensed from the grounds in Section 5 of the complaint form, was in dispute:

Issue 1: Exempt tenants: The Complainant withdrew all issues with respect to exempt tenants, excluding the current exemption for the Municipal District of Rockyview.

Issue 2: Storage areas are accounted for in main office rent and amount to double taxation.

Issue 3: Typical market vacancy is too low at 9% as assessed, and does not reflect the vacancy within the subject as of the condition date.

Issue 4: Account for the atypical recovery shortfall due to 24% vacancy.

The Complainant revised the requested assessment of \$10,740,000 indicated on pages 1 and 46 of exhibit C1, to \$12,340,000. (\$13,650,000 - \$1,301,320 (exempt component)).

Issue 1: Withdrawn.

Issue 2: Storage areas are accounted for in main office rent and amount to double taxation. In response to issue 2, the Respondent conceded the issue, and recommended a corrected assessment in the amount of \$15,660,000.

Issue 3: Typical market vacancy is too low at 9% as assessed, and does not reflect the vacancy within the subject as of the condition date.

The Complainant submitted the subject property's rent roll as of December 1, 2009, indicating a 24% vacancy rate, and several third party reports to demonstrate that the vacancy in the subject was not atypical but rather, reflective of the typical suburban NE office market as of the valuation date of July 01, 2009 [Exhibit C1 pgs 15-34].

The Respondent submitted a NE Quadrant Suburban Office Vacancy Study of 72 properties exhibiting an average vacancy rate of 8.6%. [Exhibit R1 pg 44].

Through rebuttal, the Complainant brought forward a number of issues with respect to the Respondent's vacancy study, many of which were minor area revisions. The Complainant also provided evidence of (industrial office) structures which were thought to be inappropriately included in the study, and several properties which were argued, ought to have been included in the study but were not; the most notable being the Medallion Centre, a new 180,000 sq.ft. office building with 160,000+ sq.ft. of vacant space. In amending the Respondent's vacancy study to reflect the changes, the Complainant arrived at a NE suburban office vacancy rate of 13.8%.

Decision- Issue 3

The Board finds the Complainant's position that the office market vacancy rate as at the December 31 "condition date" is not appropriate in the calculation of an assessment at market value. As an assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year, vacancy rates that reflect typical market conditions as of July 1 are fundamental. There was no evidence provided to the Board that the characteristics and physical condition of the property had changed between July 1, the valuation date and December 31, the "characteristics and physical condition date" set out in *Municipal Government Act* s.289(2), to warrant an adjusted July 1 market vacancy rate specific to the subject property.

Notwithstanding, the Board finds that the typical NE Calgary suburban office market vacancy rate as of the valuation date of July 01, 2009 is 14%.

The Board accepts the Respondent's vacancy study as amended by the Complainant's rebuttal evidence. The Respondent's position that the Medallion Centre was excluded from the vacancy study because it was incomplete as of the valuation date was not accepted by the Board. The Assessor's Request For Information (ARFI) form and the City's building permit evidence confirms that leases were signed, and tenant improvements (interior alterations) were underway as early as the spring of 2009.

With respect to the issue regarding the appropriate boundaries for the NE quadrant vacancy study, the Board found the Respondent's approach to be inconsistent in that some properties with SE addresses were included in the NE study, and some properties with NE addresses were excluded from the NE study. Also, the Respondent's comment that some properties within the NE study area were excluded from the NE study for 2010, because they "fit better" in another quadrant was of concern to the Board with respect to the legislated mass appraisal requirements.

Issue 4: Account for the atypical recovery shortfall due to 24% vacancy.

Evidence and argument in relation to this issue was essentially limited to Issue 3.

Decision: Issue 4

The Board's decision with respect to Issue 3 above, and the resultant calculation effectively addresses this issue in a fair and equitable manner with other similar competing properties.

PART D: FINAL DECISION

The assessment is revised from \$15,740,000 to \$14,150,000.

Dated at the City of Calgary in the Province of Alberta, this 11 day of August, 2010



J. Krysa
Presiding Officer

APPENDIX "A"**DOCUMENTS RECEIVED AND CONSIDERED BY THE ASSESSMENT REVIEW BOARD:**

NO.	ITEM
1.	Exhibit C1 Complainant's Evidence Submission
2.	Exhibit R1 Respondent's Assessment Brief
3.	Exhibit C2 Complainant's Rebuttal
4.	Exhibit C3 Complainant's Addenda "A" – 2009 Cap Rates
5.	Exhibit C4 Complainant's Revised Assessment Request Calculation

APPENDIX 'B'**ORAL REPRESENTATIONS**

PERSON APPEARING	CAPACITY
1. B. Ryan	Representative of the Complainant
2. P. Colgate	Representative of the Respondent

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.*