

**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:

R. Mowbrey, PRESIDING OFFICE

D. Morice, MEMBER

P. Pask, 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: 201499597

LOCATION ADDRESS: 1100 1st ST. SE

HEARING NUMBER: 56064

ASSESSMENT: \$128,330,000.

This complaint was heard on 5th day of August, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- D. Mewha

Appeared on behalf of the Respondent:

- *D. Grandbois*
- *R. Fagan*

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

There were no procedural or jurisdictional matters.

Upon questioning by the Presiding Officer, the parties present indicated they had no objection to the composition of the Board. In addition, the Board indicated they had no bias on this file.

Property Description:

The subject property is a double A office building located in the Beltline district. The building is a 14 storey tower with a net rentable area of 280,843 square feet.

Issues:

1. What should be the assessed rental rate for the grocery store?
2. What is the real parking revenue for the subject property?
3. What should be the rental rate of the office area?
4. When was the subject property completed?

Complainant's Requested Value:

\$74,530,000.

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

1. What should the assessed rental rate be for the grocery store?

Both parties agreed that the assessed rental rate for the grocery store should be \$15 PSF. The Board has no reason to question this issue and therefore accepts the \$15 PSF rental rate for the grocery store.

2 What is the real parking revenue for the subject property?

The Complainant gave evidence that there were only 356 stalls on the subject property's assessment. There were 544 parking stalls that were on another title. The Respondent agreed and the 544 parking stalls were removed from the subject properties assessment. Since both parties agreed, the Board removed the 544 parking stalls from the assessment under consideration.

3. What should be the rental rate of the office area?

The Complainant argued that the net effective rent should be allowed on the building. The net effective rent is the true rent related to a certain transaction, based on the present value using the common discount rate, of all rent receivable by a landlord over the initial fixed term, less the present value of all tenant inducements, free rent periods and commissions payable, with such remainder present value then amortized over the fixed initial lease term. (Exhibit C-2 page 8) The Complainant cited authorities (MGB 094/07 C-2 pages 12-33) the essence of the argument was that in determining "net", consideration must be given to all of the landlord's costs in marketing and renting space. The Appellants submitted that inducements in the form of cash, free rent, tenant improvements or other contributions to the tenant that reduce the overall return to the landlord must be deducted from "face" rent to achieve NARV.

The Complainant demonstrated to the Board the effect that cash inducements, tenant allowances, improvements and free rent periods have on the rental rate. The result was the lowering of the rental rate to a true NER value over a specific time period. (Exhibit C-1 pages 67-71).

The Respondent provided evidence to the Board regarding the office lease rate comparables on (AA) Beltline office buildings. (Exhibit R-1 pages 133- 140). The average was \$29.38 PSF and the median was \$28.20 PSF which support the assessment of \$28.00 PSF.

The Respondent provided evidence to the Board regarding bank lease comparables on (AA) Beltline office buildings.(Exhibit R-1 page 144). The average PSF was \$45.63 and the median was \$43.50 PSF which support the assessment of \$40.00 PSF.

The Respondent noted that if the Board agrees with the Complainant on lowering the office space assessment PSF, then the Board must lower the capitalization rate and therefore the revised assessment would be similar.

The Board's decision on cash inducements, tenant improvements and allowances to reduce the rental rate to a true NER value over a specific time period is a moot point because the rates arrived at by the Complainant approximate the assessment lease rates.

Exhibit C-1 page 68 indicates the true NER value is \$25.55 to \$28.55, whereas the assessment of the office is \$28.00 PSF.

Exhibit C-1 page 70 indicates a true NER value of \$17.50 to \$25.00 PSF over the 10 years lease compared to the \$15.00 PSF assessment.

Exhibit C-1 page 71 indicates a true NER value of \$36.37 to \$40.69 PSF over the 10 year lease compared to an assessment of \$40.00 PSF.

The Respondent has provided the Board with comparables that support the assessment rates PSF

and the Board agrees with the Respondent in this regard.

4. When was the subject property completed?

Section 314(2) of the MGA states the assessor must prepare supplementary assessments for other improvements if they are completed in the year which they are to be taxed and they are occupied during all or any part of the year. The Complainant argues that 50% of the building was vacant in December 2009. The Complainant argues that an improvement, to be considered complete, must be occupiable, although not necessarily occupied at the time of the supplemental assessment.

The Board notes that the Act does not define either "complete" or "occupiable."

The Complainant brought forth a number of definitions from the Calgary Real Estate Board (Commercial Handbook). (Exhibit C-1 pages 91-95).

- a. Building Shell. The skeleton of a building, to which the finished exterior and interior are applied. It includes the building foundation.
- b. Fit Up. The construction necessary within the enclosing walls, i.e., the space the tenant is leasing, to divide and improve that tenant's space into a functional layout, including partitions, doors, telephone and electrical outlets, finished surfaces, paint, tile, carpet etc., and up to the point of furnishing with personal property.
- c. Shell Space. The condition of a tenant's space before occupancy and before any tenant improvement.

The Complainant provided photographs to the Board, taken in December 2009 that showed the building was not fully completed as at the time of the supplemental assessment. (Exhibit C-4 pictures).

The Complainant further demonstrated to the Board that the Respondent had allowed a significant assessment decrease on other buildings during construction and not occupiable. (Exhibit C-3) page 24) The building known as Deerfoot Junction (3225 12th St NE) was adjusted by 50% as the space was being gutted and renovated, the shell space being similar to the subject property.

The Complainant asserted that the building was 52.4% occupied at December 31, 2009 and as such, 134,787 square feet of space should be assessed at 50% as there is 47.6% of space that is unoccupied.

The Complainant cited a number of authorities that assisted the Complainant's argument.

a. Exhibit C-1 pages 98-104) Court of Queen's Bench docket no. 030101254. "Capital improvements are an assessable part of the real estate." I accept the Applicant's submission that this is only so once the improvements have been done and cannot operate on an anticipatory basis. Circumstances could easily have arisen in which the improvements might never have been done. In my view, it was unreasonable for the MGB to speculate about what might happen in the future, for example, renovating the premises, in order to determine value in the past."

b. "Another error was made by the MGB in its analysis of "lease up cost" (p.13). The MGB determined that..."tenant improvements are an assessable part of the realty.." While this is correct, in my view, tenant improvements that do not exist at the time of the assessment cannot be considered assessable; including them demonstrates an unreasonable analysis of the evidence."

c. Exhibit C-1 pages 105-106. MGB 192/98 " The improvement was partially complete and occupied on December, 1996, and it is the Board's decision that only the portion that is complete and occupied can be assessed.

The Respondent indicated the building was complete and ready for occupancy as evidenced by the Owner's brochure presented by CB Richard Ellis. (Exhibit R-1 pages 56-69). The Respondent

advised the Board that a base building occupancy was granted October 23rd 2009. (exhibit R-1 page109). The Respondent produced a number of photographs for the Board's consideration, showing the building was indeed ready for occupancy.

The Respondent indicated the areas assessed are correct as the Supplemental Assessment is based on space that is deemed complete as having all the necessary components such as plumbing, HVAC, floors etc. in place and inspected and ready to finish by the owner for a tenant as part of the normal tenant improvements negotiated at the time of the leasing. The Respondent submits that an area that has been deemed occupiable by the issuance of an occupancy permit is complete, even if the tenant improvements have not been installed and therefore should be assessed.

The Board notes there is a minor difference in the square footage between the Complainant and the Respondent, the difference being the office recreational space of 2,033 square feet. The Board accepts the Respondent's total size of 280,843 square feet. The unoccupied space or vacant portion is 48% of the total size.

While the Act does not define complete and occupied, the Board decision's is that when an occupancy permit has been issued and cannot be occupied because the tenant improvements have not been installed, the area is not complete and should not be fully 100% assessed. The Board agrees with the Complainant and finds the assessment at 50 % for the unoccupied portion to be fair and equitable.

Board's Decision:

The assessment of the subject property is revised to \$81,364,000.

DATED AT THE CITY OF CALGARY THIS 2 DAY OF September 2010.


R. Mowbrey
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.*