

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

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

between:

Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

D. Thomas, PRESIDING OFFICER

A. Blake, MEMBER

B. Gerchel, MEMBER

This is a complaint to the Calgary Composite 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: 068052208

LOCATION ADDRESS: 435 4 Ave. SW

HEARING NUMBER: 59560

ASSESSMENT: \$30,660,000

This complaint was heard on the 4th day of August, 2010 at the office of the Assessment Review Board located at 4th floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom # 1.

Appeared on behalf of the Complainant:

- Mr. Daryl Genereux
- Mr. Giovanni Worsley

Appeared on behalf of the Respondent:

- Mr. Walter Krynski *Assessor, The City of Calgary*

Background

This property, an office tower known as 4th and 4th, was heard contemporaneously with two other office towers. On the just such tower (Plaza 1000) (file # 60230), the Complainant and Respondent tendered argument on issues of appropriate rental rates for office space, vacancy rate and capitalization rate. These representations from the Plaza 1000 hearing were intended, and accepted by the Board as applying to all three office towers including the subject.

The subject property located at 435 4 Ave. SW is a seven storey office tower, classed by the Respondent as a class B+ building. The building has 75,680 square feet of office space and 11,191 square feet of retail space. This building is connected to the +15 system and was constructed in 1977.

Additional issues for the 4th and 4th office tower hearing were building operating costs, with a request to increase the rate from \$14 p.s.f. to \$18 p.s.f.

Position of the Complainant

1) Office Rental Rates

The Complainant affirms they seek a reduction from \$28 p.s.f. to \$26 p.s.f. in the office rental rate to achieve equity with similar buildings.

The Complainant alternatively seeks the market rent for B- buildings which they believe is the appropriate classification for this building given its size and age. The Complainant argued that the assessment note for B- buildings to be \$16.50 p.s.f. in their analysis. The Complainant states the City has failed to recognize the decline in rental rates that was evident even at the valuation date and continues to date.

2) Retail Rental Rates

The complainant notes that the assessed \$32 p.s.f. rate bears no relation to the actual rentals received by this building of \$18.20 p.s.f. They argue this building's location is less than optimal and does not compare with other buildings which the City assesses with a \$32 retail rate.

3) Vacancy Rates

The Complainant seeks an increase in the office vacancy rates from 8% to 16% based upon their vacancy analysis previously provided.

4) Operating Costs

The Complainant seeks an increase in operating costs from \$14 to \$18 p.s.f. and offers evidence that the Complainant's actual financial statements are \$13.05 p.s.f., which with a further allowance for property taxes of \$5 p.s.f. yields a real operating cost of over \$18 p.s.f.

Additionally the Complainant supplied an assessment summary of 17 buildings held to be similar B buildings that were assessed with an operating cost of \$16 p.s.f.

The Complainant states that if the actual operating cost is not recognized then the equitable one should be.

5) Capitalization Rate

The Complainant seeks an increase in the Capitalization Rate from 8% to 8.5% to reflect the decline in market rates growing office vacancy and to preserve the traditional hierarchical difference between "A" and "B" buildings of 0.5%.

Position of the Respondent

1) Office Rental Rates

The Respondent reaffirmed their position that for all buildings of this class (B+) the office rental rate used in the assessment was fully supported in the city rental rate summary and analysis. They reiterated that even the Complainant's summary of rental rates, when pruned of post facto and non-alike leases, supports the assessment.

They note that of the 17 buildings used by the Complainant most (12) were assessed in a different class than the complainant has used.

They believe that the Complainant seeks to factor in declines in lease rates that occurred after the valuation date of July 1, 2009.

2) Retail Rental Rates

The Respondent states that the actual retail rental rate offered by the Complainant is suspect as it may be a renewal at a set rate predating the sizable increase in rental rates that occurred in recent years.

Additionally the Complainant's comparables are not comparable, not only because they are generally of different class buildings, but also because they fail to recognize the different economic zone in which this property lies. This property lies in D-T-1, the highest ranked economic zone, whereas many of the comparables offered are in D-T-2 to which different rates applied.

All market rents in D-T-1 are assessed at the \$32 rate, a rate that is fully supported by the retail rental summary supplied by the Respondent.

3) Vacancy Rates

The Respondent states that, as before, the complainant has included sub-lease vacancy in his analysis of vacancy rates. This sub-lease space offered for rent is still revenue generating space for the building and not true vacant space. Including this space in vacancy analysis skews the results and is not a true reflection of the economic impact of vacancy.

When actual vacancy is analysed both the Complainant's and the Respondent's evidence provide sound support for the 8% vacancy allowance used.

4) Operating Costs

The Respondent states the Complainant's actual operating costs carry little weight to determine what typical operating costs may be.

Additionally, the Complainant has offered no explanation why these higher costs exist from the particular characteristics of this building and why they might deserve special considerations thereby.

The Complainant's argument that 17 similar buildings were assessed using a \$16 p.s.f. operating expense is flawed in that the great majority of these 17 buildings are assessed at a different classification or exist in a different economic zone.

The operating cost used by the City was typical for the class and zone applicable to the subject property.

5) Capitalization Rate

The Respondent reaffirms their position that the analysis of the only 2009 office tower sales which were "A" buildings, and further the sale of the four "B" buildings in 2008 support the use of the 8% cap rate in this assessment. This rate is an increase of 0.5%, reflecting the beginning of a decline in values in commercial property in mid-2009.

As well the quoted cap rates of significant Industry addresses for the second quarter 2009, Colliers, CBRE and Altus insite are further support that the 8% is reflective of the market at that time.

Board Findings of Facts

- 1) The \$28 office rental rate is appropriate for this property.
- 2) The \$32 retail rental rate is appropriate for this property.
- 3) A vacancy rate of 8% is appropriate for this building.

- 4) There is insufficient evidence to vary the assessed operating cost of \$14 p.s.f.
- 5) 8% is the appropriate cap rate for this building.

Decision Reasons

1) Office Rental Rates

As before, the Board finds the City evidence as to typical market rents to be the best evidence for this property as well. The Complainant's use of many post facto leases, when the market was, by comments from all parties, in a steeper decline, has prevented the Board from giving the Complainant analysis much weight. As well the Board noted the use of timely lease data does support the assessment.

2) Retail Rental Rates

The Board could not give weight to the subject properties' single lease as indicative of market, particularly not in the face of the Respondent presentation of several leases in this economic zone supporting the assessed rate.

The request for an equitable reduction to reflect similar buildings also fails as the buildings represented to be similar on analysis appear to be of differing building classification and/or economic zone. In sum no clear case of inequity was presented.

3) Vacancy Rates

The Board has accepted the Respondent's position that the vacancy analysis of the Complainant is tainted in its results by the inclusion of sub-lease vacancy as if it were a factual economic vacancy. When this element is excluded, the Complainant's own evidence is supportive of the vacancy factor used.

4) Operating Costs

The Board agreed with the Respondent's position that the actual operating costs of the subject have been presented without a rationale why they may be found to be typical or warranting special considerations.

The equitable claim for similar operating costs with similar buildings also fails as the evidence for the buildings claimed to be similar had significant disparity in class or zone as assessed by the City. No sufficient evidence was provided why the Board should treat all these buildings as similar to the subject property.

5) Capitalization Rate

The Board determined that the inclusion of the 8-West Building in a Cap Rate analysis was inappropriate. Whether court ordered or merely court approved the evidence showed the sale of 8-West was precipitated by a business failure and the sale on behalf of creditors may not reflect a typical sale value. Without this sale, the Complainant's analysis also tends to support the assessment.

The traditional hierarchy of 0.5% variance between "A" and "B" buildings has been continued with "A" buildings being assessed at 7.50% and "B" buildings at 8.00%.

Decision

The complaint is denied and the assessment is confirmed at \$30,660,000.00

DATED AT THE CITY OF CALGARY THIS 26 DAY OF August, 2010.

 D. THOMAS, 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.*