

**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 LTD., Complainant

and

THE CITY OF CALGARY, Respondent

Before:

**J. KRYSA, Presiding Officer
M. PETERS, Member
T. USSELMAN, Member**

A hearing was convened on August 25, 2010 in Boardroom 12, 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:	056012693
LOCATION ADDRESS:	1010 1st Avenue NE
HEARING NUMBER:	57744
ASSESSMENT:	\$7,030,000

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a 14,470 square foot (sq.ft.) parcel of land improved with a 3 storey, 29,006 sq.ft. office building constructed in 1981, and known as the Bridgeland Professional Centre. It contains 25,375 sq.ft. of office space, 3,631 sq.ft. of retail, and 37 parking stalls.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The Assessment Review Board derives its authority to make decisions under Part 11 of the Act.

At the commencement of the hearing, the Complainant raised the following preliminary matter:

The Complainant argued that one of the issues of the complaint before the Board, the vacancy rate of north-east suburban offices, has been an issue in several previous complaints that have been heard and decided by other Boards. As a result of these decisions, which were in favor of the Complainant, the Complainant argued that the Respondent's continued defense of subsequent property assessments with the same issue, amounted to an abuse of process. In support of the argument the Complainant submitted three recent decisions of the Calgary Assessment Review Board, exhibits C2, C3 and C4, and requested that the Board decide the issue without requiring the Complainant's introduction of evidence and argument.

The Respondent argued that the previous Board decisions are not precedent setting nor binding on the Board hearing this matter. Furthermore, the Respondent submitted that not only are the Respondent's evidence and argument in this complaint are not identical to that of the previous complaints, she was not the assessor who attended the previous hearings, and having not heard the Complainant's evidence and argument in person, she would not be able to respond to it, which would prejudice her case.

The Complainant argued that it is irrelevant that different assessors attend hearings, as the Respondent in all of these matters is the City of Calgary, and the issue has been heard and decided before a representative of the Respondent. Further, the Complainant argued that the Respondent should not be allowed to alter their defense from that of previous hearings in response to the Complainant's rebuttal evidence and the Board's decisions, as similar criteria was used in the preparation of all of the assessments under complaint.

Decision: Preliminary Matter

The Board finds that granting the Complainant's request would be inconsistent with the principles of natural justice and fairness, and the request is denied for the following reasons:

1. Previous decisions of an Assessment Review Board are not binding on another Assessment Review Board, although they may be persuasive if the evidence and argument are identical.
2. In this instance, the Board is advised that the Respondent's evidence and argument in defense of the assessment are not identical to that of previous hearings. The fact that a different advocate is appearing on behalf of the Respondent almost ensures that the argument will not be identical.
3. Notwithstanding point number two above, the principles of natural justice and fairness most certainly require that the Respondent's representative be allowed to hear the evidence and argument that they must respond to. Further, either party is entitled to revise their evidence and argument from that submitted in prior hearings of similar properties; each individual complaint is an individual matter before the Board.

4. If the Board ruled in the Complainant's favor and did not require the matter to proceed to a hearing, the Board would be relying on the Complainant's sole interpretation of the Board's rulings from the previous decisions. The Board is not prepared to accept one party's interpretation of previous Board decisions, and deny the opposing party a right to be heard.

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 16 reasons for complaint in Section 5 of the Complaint form, with a requested assessment of \$2,980,000, and 9 objectives in exhibit C1, however at the hearing the Complainant addressed the following issues:

- Issue 1: The assessment exceeds the market value and equitable value of the subject, based on a market rent of \$18.00 per sq.ft.
- Issue 2: The subject is inequitably stratified as a NW suburban office with a 6% vacancy allowance, rather than a NE suburban office with a 9% vacancy allowance; revised to 14% in some instances as a result of recent Assessment Review Board decisions.
- Issue 3: The long term vacancy rate within the subject has not been reflected in the typical 6% vacancy allowance applied by the assessor.
- Issue 4: The subject is inequitably stratified as a medical office, rather than typical suburban "B" class office.
- Issue 5: The market rent rate of \$2,880 per parking stall per annum is inequitable with the rate applied to similar properties, and inconsistent with the business assessment rate.

The Complainant requested the assessment be set at \$5,090,000.

- Issue 1:** The assessment exceeds the market value and equitable value of the subject, based on a market rent of \$18.00 per sq.ft.

The Complainant argued that the subject's market rent coefficient is incorrect at \$19.00 per sq.ft. In support of the argument the Complainant submitted eleven northeast suburban office lease rate examples, previously provided by the Respondent in earlier hearings, illustrating a median lease rate of \$18.00 per sq.ft. [C1 pg 28]. The Complainant also submitted evidence of lease rates assigned to the subject, and comparable properties for the prior assessment year to illustrate that changes in market rent coefficients have not been consistent [C1 pgs 32-44].

Further, to establish that the subject is inequitably assessed in relation to other office buildings, the Complainant submitted the assessments of eleven northeast "B" class suburban offices, exhibiting a range of assessed values of \$156 to \$235 per sq.ft. in contrast to the subject assessment of \$258 per sq.ft. [C1 pg 269].

The Respondent submitted an analysis of northwest suburban medical office leases indicating a median rent rate of \$19.00 per sq.ft. in support of the market rent coefficient assigned to the subject property [R1 pg 38].

Decision – Issue 1

The Board finds that the \$19.00 market rent coefficient is supported by market evidence, and is not inequitable in relation to similar properties.

The Board finds the Respondent's northwest medical office lease rate evidence of \$19.00 per sq.ft. is derived from properties similar to the subject property, and supports the subject's market rent coefficient. Further, the lease rates of the three office properties with NE addresses and located on Centre Street, in proximity of the subject, range from \$20.11 to \$23.38 per sq.ft., and further support the subject's \$19.00 market rent coefficient [C1 pg 34]. The Complainant's evidence of a median \$18.00 lease rate from northeast suburban offices was afforded little weight, as it included properties as far away as 24th street and 37th avenue, which the Board did not find to be comparable to the subject's location.

The Board further finds that the Complainant's equity comparables, also from the northeast market area were not similar to the subject property, as many were located several miles away from the subject, and would not reflect the subject's superior location near the downtown core.

The Complainant's evidence of market rent coefficients assigned to office buildings in prior years was determined to be of no value, and immaterial to the Board in determining a proper market rent coefficient for the July 1, 2009 valuation date of the assessment.

Issue 2: The subject is inequitably stratified as a NW suburban office with a 6% vacancy allowance, rather than a NE suburban office with a 9% vacancy allowance; revised to 14% in some instances as a result of recent Assessment Review Board decisions.

The Complainant argued that the City Assessor has stratified this property as a northwest suburban office, and it should be grouped with, and valued consistently with northeast offices. In support of the argument, the Complainant submitted evidence to demonstrate that the subject property has a northeast address, it was stratified the previous assessment year as a northeast office, and third party reporting agencies consider Centre Street as the boundary between northwest and northeast offices [C1 pgs 18 to 22].

The Respondent submitted an analysis of northwest suburban office vacancy to demonstrate that the office properties located between Centre Street and Deerfoot Trail experience similar vacancy characteristics to the suburban offices in the northwest market area, and are dissimilar to the offices in the northeast market area. As a result of the analysis, the Assessor included these properties, with a few exceptions, in the northwest market area for the current assessment year [R1 pg 44].

Decision – Issue 2

The Board finds that the subject property is properly stratified as a NW suburban office.

The Board accepts that although the municipality's addressing scheme and some third party reporting agencies identify the subject as a northeast suburban office, the legislation requires the assessor to stratify properties into groups for mass appraisal purposes, based on typical market conditions. The Respondent's market evidence with respect to rent rates, and vacancy rates derived from the properties in the vicinity of the subject located between Centre Street and Deerfoot Trail, persuaded the Board that the subject is similar to the NW office inventory, and differentiated from the northeast office inventory by the subject's proximity to the downtown core, and the typically higher vacancy rates evident in the northeast market area.

Issue 3: The long term vacancy within the subject has not been reflected in the typical 6% vacancy allowance applied by the assessor.

The Complainant submitted rent rolls from the subject property dated August 20, 2009 and November 9, 2009, as well as a May 27, 2008 ARFI (assessment request for information) form indicating that the subject has a current vacancy rate of approximately 30% [C1 pgs 35 to 65].

The Respondent submitted an April 15, 2009 ARFI form indicating a vacancy rate of 30%, and a June 27, 2008 ARFI form indicating a vacancy rate of 0% [R1 pgs 28 and 63].

Decision – Issue 3

The Board finds that there was insufficient evidence presented to establish the subject suffers from atypical (long term) vacancy.

Although the 2009 ARFI information from both parties indicates a vacancy rate of 30%, the 2008 ARFI information from the Complainant and from the Respondent was inconsistent. The Respondent's ARFI evidence indicates full occupancy as of June 27, 2008, however the Complainant's ARFI evidence dated May 27, 2008, one month earlier, indicates a vacancy of 3,771 sq.ft. in Unit 206. As both parties submitted only partial AFRI documents, the Board finds the evidence inconclusive with respect to vacancy within the subject property prior to the assessment year.

Issue 4: The subject is inequitably stratified as a medical office, rather than a typical suburban "B" class office.

The Complainant argued that as a result of the demolition of the hospital in the area, the subject property is no longer a medical office, and should be assessed as typical suburban office.

Decision – Issue 4

The Board finds that the subject's stratification as a medical office, rather than a typical suburban class "B" office is irrelevant.

The Board is persuaded that the property is a Class B medical/office building by the subject's marketing information on page 23 of exhibit C1, and that the comparable medical office leases provided by the Respondent represent valid comparables to the subject. However, in light of the Board's findings in issue #1, where the subject's market rent coefficient of \$19.00 is supported by the Respondent's medical office lease analysis, and is also supported by the Complainant's market evidence from typical (non-medical) offices along Centre Street, the subject's stratification as a medical office, rather than a typical suburban office building is immaterial.

Issue 5: The market rent rate of \$2,880 per parking stall per annum is inequitable with the rate applied to similar properties, and inconsistent with the business assessment rate.

The Complainant submitted the assessed parking rate coefficient for nine suburban office properties, indicating a rate of \$1200 was applied consistently, in contrast to the subject's coefficient of \$2,880. Further, the Complainant provided the 2010 business assessment notice for the subject calculated at a rate of \$1,200 [C1 pgs 66-67].

The Respondent argued that the typical market rent for parking in market area EN1 was \$2,880, as determined from an ARFI return from 736 1st Avenue NE, another property in market area EN1. The rate was only applied to the subject and 736 1st Avenue NE. As a result of a sale of 736 1st Avenue NE, the Respondent argued that that rate had to be used to arrive at an acceptable ASR (assessment sale ratio) for audit purposes [R1 pgs 39-42].

The Complainant argued that the Respondent was merely "sale chasing", in using site specific data from a property to predict it's value near the sale price, and that the subject property was the only other property to which the \$2,880 parking rate coefficient was assigned.

Decision – Issue 5

The Board finds that the market rent coefficient of \$2,880 per parking stall is inequitable with the rate applied to similar properties. A rate of \$1,200 per parking stall is found to be equitable.

The Board was not persuaded that "typical market conditions" can be determined from one ARFI report, representing one individual property.

PART D: FINAL DECISION

The assessment is revised from \$7,030,000 to \$6,260,000.

Dated at the City of Calgary in the Province of Alberta, this 5 day of October, 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 C2 Assessment Review Board Decision 1074/2010-P
3.	Exhibit C3 Assessment Review Board Decision 1089/2010-P
4.	Exhibit C4 Assessment Review Board Decision 1090/2010-P
5.	Exhibit R1 Respondent's Evidence Submission

APPENDIX 'B'**ORAL REPRESENTATIONS**

PERSON APPEARING	CAPACITY
1. B. Ryan	Representative of the Complainant
2. K. Moore	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.*