

REVISED

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-26.1, Section 460(4).

between:

Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER

K. Coolidge, MEMBER

J. Mathias, 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:	068228402
LOCATION ADDRESS:	615 Macleod Trail SE
HEARING NUMBER:	58785
ASSESSMENT:	\$23,430,000

This complaint was heard on the 14th day of September, 2010 at the office of the Assessment Review Board located at the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Property Description:

The subject is a 15 storey office building in the DT3 zone of downtown Calgary, constructed in 1972, known as Rocky Mountain Plaza. It is on the eastern edge of DT3 across from the Public Library, cater corner to City Hall. It consists of 174,039 SF of office space, 17,635 SF of retail and 102 parking stalls on a 39,474 SF parcel. It is assessed on the income approach based on \$22/SF office, \$18/SF retail, \$3,150/annum parking with office and retail vacancy at 8%. Operating costs of \$16 for office, \$17 for retail and vacancy shortfall of 2% are applied and the resulting net operating income is capitalized at 8% to arrive at full assessment value of \$47,660,500.

A significant portion of the building is leased to exempt tenants. Details were not provided, but the values attributable to the exempt tenancies total \$24,227,500 and are deducted from the full assessment values to arrive at the assessments under complaint.

Issues:

The Complainant identified several issues on the Complaint forms, but at the hearing the issues argued and considered were:

1. The rental rate applied reflects a class C building but the vacancy and capitalization rates are lower than applied to other C buildings, this is inequitable.
2. The rental rate for the offices should be decreased to \$18 from \$22, the vacancy should be increased to 10% from 8% and the capitalization rate should be increased to 9% from 8% consistent with the request for other C buildings.
3. The parking rate should be decreased to \$300 from \$350.
4. 90 of the parking stalls should be exempt from taxation.

Complainant's Requested Value: \$10,700,000 revised to \$14,620,000 at the hearing.

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

Issue 1: Classification

Complainant's position:

The subject is a higher end C building. It is in an inferior location with no +15 connection. The rental rate applied is consistent with other C buildings but the other income parameters are inequitable and should be adjusted to be consistent.

Respondent's position:

The subject is a B building but in a different market zone, therefore a lower rental rate was applied. The photographs clearly show a +15 connection to the Public Library. The Respondent concedes that this +15 network does not connect to the downtown core, however it

does connect to City Hall and Bow Valley College, the "government" +15 network. The Respondent presented the 2009 Assessment Request for Information (ARFI) return for the subject indicating a very stable ("AAA quality") tenant base and low vacancy. The subject is performing very well and should be considered a B building with the typical B class parameters applied. The inferior location should only be reflected in the rental rates as applied in the assessment.

Decision and Reasons:

The Complainant did not provide evidence other than the assessed rental rate and inferior location to support the position that the subject is a C building. The list of building classifications entered in the Complainant's general evidence package (C3 p106) shows the subject is considered a B building. Accordingly, the Board finds it is appropriate to adjust the rental rate to recognize the inferior location but to apply typical B parameters otherwise.

Issue 2: Rent rate, Vacancy and Capitalization rate

Both parties relied on the same presentation used for other class B and C buildings in hearings earlier in the day and the previous day.

Decision and Reasons:

Having found the subject is a B class building, the reasons for decision on vacancy allowance (confirmed at 8%) and capitalization rate (increased to 8.5%) as detailed in CARB 1576/2010-P apply. The rental rate used in the assessment is lower than the typical rental rate found by the Board to be appropriate for the DT2 zone, and no evidence was led as to appropriate rates in the DT3 zone, therefore the Board confirms the rental rate applied.

Issue 3: Parking Rate

Complainant's position:

The Complainant presented the parking rent rolls for the subject building dated February 2009 and December 2008. 33 of the 102 stalls are tandem stalls, the majority of which are leased at a rate of \$200/mo compared to the typical rate of \$300-\$350 per month. The characteristics of a tandem parking stall are not comparable to a regular stall and this should be recognized in the rate applied for assessment purposes.

Respondent's position:

The ARFI return listed 92 parking spaces at \$350 and 10 parking spaces at zero. There is no mention of tandem spaces at a lower rent; therefore there should be no reduction of the assessed parking rate.

Decision and Reasons:

The Board reviewed both the ARFI return and the parking rent rolls and finds the information in the rent rolls more compelling. The ARFI does not have space to list multiple parking rates and the recording of a single rate (the highest achieved) cannot be construed to mean the tandem spaces do not exist when they are clearly recorded as such on the rent roll. Logic and the rates

paid support a lower value for tandem parking spaces. Accordingly, Board finds that the appropriate parking rates to be used for the assessment is \$200/month for 34 tandem stalls and \$350/month for the 68 regular stalls for an average of \$300/month for the 102 stalls.

Issue 4: Parking Exemption

Complainant's position:

The parking rent roll also shows that a significant portion of the stalls are leased by the exempt tenants and are tied to their office leases. The tenants are exempt from taxation; therefore the taxable tenants are charged the taxes on that portion of the building value attributable to the exempt tenants' parking spaces. This is unfair. The Complainant requested the portion of the assessment attributable to the parking stalls leased by Alberta Infrastructure, Bow Valley College, City of Calgary, and Embassy of the US of A to also be exempted.

Respondent's position:

The Respondent never exempts parking spaces. On other appeals where exempt tenants have space the Complainant has not previously argued the parking spaces should be exempt.

The property owner has care and control of the parking spaces and is charged for the business tax associated with all of the parking spaces. The rent roll clearly shows the landlord is receiving rent for the parking and it is not included in the lease. No lease documents were provided to support the Complainant's position that the parking spaces are part of the lease, and in any event the activities of the exempt tenants occur in the office space, not the parking stalls.

Decision and Reasons:

The *Municipal Government Act* provides 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;
 - (b) property held by a municipality, ...
 - ...
 - (d) property, other than a student dormitory, used in connection with educational purposes and held by any of the following:
 - (i) the board of governors of a university, technical institute or public college under the Post-secondary Learning Act;

The United States Consulate General is not exempt under the *Act* but is also agreed to be an exempt tenancy, and for the purposes of this decision is assumed to be subject to the same provisions for exemption as the Crown.

The parking spaces are clearly leased by the tenants in the building, the stalls are listed in the ARFI under "# of 24/7 reserved stalls" with 92 recorded as "Tenant parking stalls with additional charge to leased" and 10 as "tenant parking stalls with no additional charge to leased". The rent roll lists the tenant name and comments such as "For term of lease" and coded "subject to increase" or "cannot increase". The actual leases were not provided but the Board is of the opinion that provision for parking stalls would be included in a typical lease agreement and the Board considers the evidence in the rent roll to be reliable. Therefore the Board finds that the

parking stalls are "held" by the exempt tenant regardless of whether the rent is charged separately or included in the payment for the office space portion of the lease.

The Board agrees with the Complainant that since the exempt tenancies do not pay tax, it is unfair for their portion of the tax burden to be borne by taxable tenants. Accordingly, the parking spaces that are leased by the exempt tenants should also be exempt from taxation. The Board notes that 90 stalls are leased by the exempt tenants but two (stalls 72 and 77) are not noted on the rent roll as being tied to a lease. Therefore only 88 stalls (34 tandem and 54 regular) should be exempt.

Board's Decision:

The complaint is allowed, in part, and the assessment is reduced as follows:

\$18,790,000 (\$44,310,000 less \$25,520,000 exempt)

based on capitalization rate increased to 8.5%, tandem parking stalls assessed at \$200 per month and parking stalls leased by exempt tenants to be also exempt, with no changes to any of the other parameters.

DATED AT THE CITY OF CALGARY THIS 14 DAY OF October 2010.



H. Kim

Presiding Officer

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

NO.	ITEM
C1	Complainant Forms
C2	Complainant's general argument for Class B and Class C
C3	Complainant's vacancy rate, rental rate and capitalization rate analysis and classification of buildings
C4	Appraisal texts, previous board orders, third party reports
C5	Complainant's Site Specific submission
R1	Respondent's submission
R2 to R10	Precedent CARB orders for office buildings

APPENDIX 'B'**ORAL REPRESENTATIONS****PERSON APPEARING CAPACITY**

Giovanni Worsley	Altus Group Limited, Complainant
Dan Lidgren	Assessor, City of Calgary, Respondent
Andy Czechowskyj	Assessor, City of Calgary, 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.*