

**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:**

***D Trueman, PRESIDING OFFICER***

***J Rankin, Board Member***

***I Fraser, Board 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: 201098431**

**LOCATION ADDRESS: 227 – 11<sup>th</sup> Avenue SW**

**HEARING NUMBER:59183**

**ASSESSMENT: \$133,050,000**

This complaint was heard on 16th day of September, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *Brock Ryan*

Appeared on behalf of the Respondent:

- *Dale Grandbois and Darren McCord*

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

There were no preliminary, procedural or jurisdictional matters before the hearing.

**Property Description:**

The subject property is a large three building complex located in the Beltline community in southwest Calgary. Each building is described as in excess of five stories and building A, which was constructed in 2002, contains 123,075 ft.<sup>2</sup> of leasable area. Building B, which was constructed in 2007, contains 126,429 ft.<sup>2</sup> of leasable area. Building C, which was constructed in 2008, contains 106,945 ft.<sup>2</sup> of leasable area. This complex occupies an assessable land area of 106,136 ft.<sup>2</sup>. There is a small retail component consisting of 3,709 ft.<sup>2</sup>. The total leasable area for assessment purposes is 356,448 ft.<sup>2</sup>. There are 299 underground parking stalls. Known as the IBM building, it has been considered a marquee property in former years. On May 21<sup>st</sup> 2008 this property sold for \$181,500,000.

**Issues:**

On the Complaint form there are listed 13 points which have been described as "grounds for appeal". At the beginning of the Complainant evidence package exhibit C1 the Complainant outlines eight points which he describes as "objectives". At hearing the panel determined that the Complainant believes that the Assessor has over assessed his property based upon:

- 1/ over estimating the buildings lease rate potential
- 2/ over estimating each underground parking stall value
- 3/ underestimating the appropriate capitalization rate
- 4/ assessment with respect to similar properties is too high

**Complainant's Requested Value:**

\$103,351,049

**Complainant's position with respect to issues**

**Issue #1**

The Complainant opined that while his property is still good quality it is nevertheless aging and therefore losing its competitiveness with newer properties that have recently been constructed in the area. The Complainant testified that there is a great deal of inconsistency and conjecture

with respect to office building classifications in the City of Calgary. To this end he referenced the Keynote Building as well as the Stampede Station Phase 1, both located some 3 to 4 blocks east of the subject property. He contended that these properties were superior inasmuch as new tenants would receive "build to suit" fixturing. He pointed to two recently signed leases in the Keynote Building where the net effective rent ranged from \$24-\$25.55 while at the same time two recently signed leases in the subject property yielded net effective rent ranging from \$17.25 to \$19.29. His concern was that the Assessor had valued both of these buildings based upon a \$28 rental rate. His presentation went on to outline various other properties in the Community which he described as similar e.g., "Citadel West", "Ribtor", "Vintage Towers" and most importantly the "TransAlta" Building. He pointed out that a variety of rental rates ranging from \$17 to \$23 sq ft were applicable to these buildings. Based upon the foregoing a rental rate of \$23 per Sq. foot would be most appropriate for the subject property. The Complainant presented case law from the Court of Queen's Bench of Alberta citation: 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512, decision of Honourable Madam. Justice L D Acton which at paragraph 24, in paraphrased form suggests that 'the sale of the subject property is the best means of establishing the market value of that property'. The Complainant has taken this to mean that the most recent leasing in the subject is the best means of establishing a fair market rental rate for the subject.

#### Issue #2

The Complainant addressed the parking stall valuation the Assessor attributed to underground parking at the TransAlta building, and "Vintage Towers" virtually next-door to the subject property. He contended through photographic evidence that there was no difference between these facilities and given that the parking stall rate of \$2,100 per stall was applicable in both buildings he felt that the same rate should be applied to the subject property; and not the \$3,000 per stall rate that had been applied.

#### Issue #3

The Complainant presented capitalization rate information pertaining to Vintage Towers and the TransAlta Building, both of which are again virtually next-door neighbours to the subject. The Assessor has applied a 7.5% capitalization rate to both of these properties and the Complainant believes that based on age and Real Insite (a commercial real property reporting firm) building classifications similarity has been demonstrated and that his subject property should have its applied capitalization rate raised from 7.25% to 7.5%.

#### Issue #4

With respect to fairness and equity the Complainant presented a separate rebuttal evidence package identified as exhibit C2, which provided extensive case law going back to the Supreme Court of Canada 1881 decision in Jonas v. Gilbert. He has also referenced the more recent British Columbia Court of Appeal decision in Assessor for Area 9, Vancouver v. Bramalea (1990) 52 BC. C.A. He contends that this authority clearly provides him with the right to the lower assessed values found at his neighbouring properties.

### **Respondent's position with respect to issues**

#### Issue #1

The Respondent commenced his presentation of his exhibit R1 by pointing out the sale of the subject property in May of 2008. He demonstrated to the Board that the subject had been valued for this years assessment purposes (July 1 in 2009) at \$133,050,000. This represented a 22% reduction from its previous years assessment or a 27% reduction from its previous years

selling price, which had taken place ostensibly at the previous years assessment valuation date. In his opinion the Complainant's requested assessment amount of \$103,050,000 would represent an unreasonable 43% discount from the negotiated sale price of the subject, some 13 months prior. He went on to point to his page 16 exhibit R1 whereby he describes 12 bullet points which are the basis for the City's particular brand of office building classification. He then on page 67 of R1 presents a chart of each of the three buildings in the subject complex compared with three of the Complainant's lease rate comparables. The chart is a "Stacked Availability Comparison" which is a market perspective provided by one Harvey Fairfield. This chart delineates each of the six compared buildings as class A buildings and all achieving rents in the \$27 to \$32 per sq. foot, face rate range, suggesting a third-party opinion of similarity between these buildings. More importantly the Respondent presented a current rent roll for the subject property and at page 82 summarized recent leases ranging from \$27 to \$35 Dollars per Sq. foot net.

#### Issue #2

It is understood that the assessment value for a parking stall is the product of its annual rental income. In other words a stall valued at \$2,100 will rent for roughly \$175 per month. At page 74 of exhibit R1 the Respondent presented the rental income for stalls in the subject property on a price per month basis ranging from \$375-\$405. Inasmuch as he had selected a \$250 per month rental rate for the subject parking stalls he thus assessed them at \$3,000 per stall and said he felt that he had more than fairly provided equity in assessed value.

#### Issue #3

In defense of the Respondent capitalization rate selected at 7.25% attention was drawn to page 29 of exhibit R1 which described the Real Net reporting of the sale of the subject itself, on a stabilized basis, representing a capitalization rate of 6.7%. The Respondent reckoned that his selection of a 7.25% rate adequately accounted for the change in market conditions from the date of the subject sale, in May of 2008, to the July 1, 2009 valuation date and that this particular market data represented the best possible evidence.

#### Issue #4

The Respondent took issue with the Complainants charge of inequitable treatment by saying that the subject property had been considered in former years as a "best in class" property in the neighbourhood. He said that the complex compared favourably with the two newly constructed buildings known as Keynote and Stampede Station, proof of which was contained on his material located on page 67 of exhibit R1 which depicted each of these properties and their similar rental rates. Furthermore, the same source again depicted the same properties on page 72 providing availability information which suggested that there was only a small amount of space available, at the subject property in building A, thus pointing to virtually zero vacancy and proof that the IBM complex was performing well under these rental rate circumstances.

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

Valuation theory holds that comparison of other properties or their valuation components must be made having regard to their similarity or with use of provable adjustments thereto. In the case of the recent leases presented by the Complainant, in the subject property, demonstrating a roughly \$19 net effective rent, the board were unable to determine the nature and extent of the type of improvements or other inducements that would have yielded such an effective rent. The Board prefers to accept the evidence of the Respondent whereby he demonstrates that his

mass appraisal model contemplates a wide variety of building characteristic differences before determining a building classification. It is also noted that once a building classification has been established the City then compares contract rate rental information to confirm comparability. The Board then referenced the Appraisal of Real Estate, First Canadian Edition, in Chapter 10 where it says in paraphrase 'the quality and condition of building components greatly influence the ability of the property to produce rental income' and 'the properties comparability with other properties'. The Board takes this to mean that the measure of a building's ability to earn income is a good test of its comparability with other buildings, and in the circumstances of uncertainty otherwise, perhaps the best test for comparability. The Board took special note of rental evidence supplied in the exhibit R1, page 82 and C1, page 66 which depicted average 2009 lease rates at Station Square of \$28.87, average lease rates in 2008 for the subject property of \$30.51 and average lease rates at the subject property in 2009, although post facto in September, at \$26.00. Given this information the Board felt that the assessor's proposed lease rate of \$28 for evaluation purposes was much more reasonable than the Complainants proposed lease rate of \$23. It did not go unnoticed by the Board that the asking lease rate for the subject property is \$29. With respect to Issue #1 the Board finds that 28 Dollars per Sq. foot is an appropriate expected lease rate for valuation purposes.

With respect to Issue #2 the Board accepts the assessor's evidence at page 74 that the subject property is achieving between \$375 and \$405 per month rent. It is therefore without merit to expect a parking stall valuation of \$2,100 unless evidence had been submitted that the parking stalls in the TransAlta Building and Vintage Towers, which are purported to be similar, were also achieving monthly rent levels of approximately \$400.

Neither party presented extensive evidence and argument that is typical of a capitalization rate study. The Complainant presented evidence of a 7.5% capitalization rate which the assessor had applied to buildings which the Complainant said were similar. On the other hand the Respondent pointed to the sale of the subject in 2008 and its reported 6.7% capitalization rate. Given the general knowledge that the market declined through the 2008 to 2009 period the Board felt much more comfortable, in respect of Issue #3, with the Respondent's choice of a 7.25% capitalization rate.

Regarding Issue #4 the board recognizes the Bramalea decision as the high water mark for confirming the assessed person's right to fair and equitable treatment with competitive or similar properties. At page 14 the Hon. Mr. Justice Taylor says 'It is my view that the principles mentioned give the taxpayer two distinct rights: (i) a right to an assessment which is not in excess of that which can be regarded as equitable: and (ii) a right not to be assessed in excess of actual value. The Board interprets actual value to be synonymous with market value as referenced in the Municipal Government Act of Alberta. What the board has determined to be the operative or essential elements of the Bramalea decision are that throughout this case law Justice Taylor refers to properties "in the same class". The Board takes this to mean that there must be recognizable similarity between the appealed property and purported similar properties, whose assessments the Complainant would like to have serve as benchmarks. Given that the Board has determined that the ability to produce income is reasonable criteria upon which to determine comparability it is therefore unable to compare the TransAlta building or Vintage Towers to the subject property. Neither was it able to find comparability with other equity comparisons presented by the Complainant such as "Citadel West", "Ribtor", or "Critical Mass" particularly if they had recently undergone extensive rehabilitation, renovation or remodelling or contained significant retail components.

**Board's Decision:**

The appeal is denied and the assessment is confirmed at \$133,050,000.

DATED AT THE CITY OF CALGARY THIS 6<sup>th</sup> DAY OF October 2010.



 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.*