

**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 LTD., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

S. Barry, PRESIDING OFFICER

R. Clark, MEMBER

D. Cochrane, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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: 067136002

LOCATION ADDRESS: 1300 8 ST. S.W., Calgary, Ab

HEARING NUMBER: 58271

ASSESSMENT: \$7,670,000

This complaint was heard on the 22nd day of September, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *G. Worsley, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *D. Lidgren, City of Calgary*

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

The Respondent invoked *Matters Relating to Assessment Complaints* (M.R.A.C.), s.8(2)(c), specifically that the document submitted by the Complainant does not constitute rebuttal in that it does not speak to the City's argument; it merely introduces new evidence that could have formed part of the initial documentary evidence. The issue was raised at the beginning of the hearing but the Board advised that it would defer its decision and asked the Respondent to raise the matter just before the Rebuttal was introduced. In that way, the Board felt, it could better evaluate the concern.

At the appropriate part of the hearing the Respondent reiterated his position. The Complainant argued that the pictorial evidence in the Respondent's package only addressed the exterior of the building and did not depict internal conditions that impact the vacancy rate addressed by both Parties. The Rebuttal evidence is, for the most part, pictures of the interior of the subject building. The timing of the submission was not at issue.

It is agreed that Rebuttal evidence is not intended to be new evidence but rather a response to, or a refutation of, information or evidence brought forward by the other Party. The connection between the Rebuttal pictures and the direct evidence of the Respondent is not as strong as it could be; however, it is there. In the interests of natural justice the Board accepts the portion of the Rebuttal document that contains pictures but does not accept the email that was also included, presumably to substantiate information provided in the Complainant's primary disclosure document. The CARB Decision in the Rebuttal package is not deemed to be evidence, per se.

Property Description:

The property is a mixed use office and retail building, commonly known as Barclay Square, constructed in 1967 and encompassing 32,048 sq.ft. of assessable area on a 0.37 ac parcel. It is located in the Beltline area and the land use district is Centre City Commercial Corridor District. It is calculated that 995 sq.ft. of that area is exempt from taxation. The property is assessed using the income approach.

Issues:

Once again the Complainant, Altus Group Ltd., attached a list of 15 grounds for appeal or issues to its Complaint Form. Once again the Board was required to sift through these grounds in order to determine what was actually to be decided. The Board directed the Complainant in attendance at the hearing that, from this point forward, Altus is to come to the hearings prepared to advise the Board of the specific items before it and further, that this message be conveyed to the appropriate managers at the Complainant's office.

For the purposes of this hearing, the Complainant reduced the 15 grounds to the following:

1. The use, quality and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirement of Section 289(2) of the Municipal Government Act
2. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts
3. The assessment of the subject property is in excess of its market value for assessment purposes
4. The assessment market analysis has insufficiently and incorrectly considered and adjusted most recent property sales
5. The market office rental rate should be \$14 psf
6. The assessed office and retail vacancy should be 12%
7. The assessed office and retail operating cost adjustment should be \$15.50
8. The classification of the subject premises is neither fair, nor equitable, nor correct. The current assessed classification is A. The subject is a B class office building.
9. This Notice is filed based on information contained in the Assessment Notice as well as preliminary observations and information from other sources. Therefore the requested assessment is preliminary in nature and may change.

These were further refined in the Complainant's disclosure document as follows:

Is the assessment correct and equitable having regard to the typical rental rates of \$20 per sq.ft, the typical vacancy rate of 8.5%, and the typical operating costs of \$12 per sq.ft. that were employed by the Respondent in assessing this building which has been classified by the Assessor as a B+ building?

Complainant's Requested Value: \$5,120,000

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

The Complainant argues that the City assesses this property as a B+ building when, in fact, it is a B class building at best. The applied rental rate of \$20 per sq.ft. should be reduced to \$15; the vacancy rate should be increased to 20% to acknowledge historic chronic vacancies and the operating costs should be increased to \$14 per sq.ft. to better reflect the repairs that are required to the building. The Board finds that, externally, the subject property is similar to other nearby buildings in the Beltline area having regard to the size, floor plate, location and the other usual attributes of a B+ building, excluding rent. While the ability to command certain rents may aid in the

classification of a building, it is not the sole determinant and the Board, for the purposes of this complaint will accept the premises as a B+ building.

In dealing with rental rates, the Complainant has introduced rent rolls for the subject property for July 1, 2007, July 1, 2008, July 1, 2009 and January 1, 2010. Three of the leases are charted in comparison to five other leases in two other buildings. Two leases bracketing the valuation date achieved \$14 per sq.ft. As well, three other leases, two in September 2008 and one in October 2008, generated \$26 per sq.ft. and a more recent lease in January 2009 also achieved \$26 per sq.ft. The equity comparables used by the Complainant are for B or B-, rather than, with one exception, B+ buildings. In contrast, the Respondent demonstrates 13 equity comparables in the immediate area that are assessed at \$20 per sq.ft. Additionally, the Respondent presented evidence of comparable B+ properties to show that the mean rental rate at July 1, 2009 was \$21.33 per sq.ft. The Board accepts the rental rate valuation of \$20 per sq.ft. as applied by the Respondent.

In dealing with chronic vacancy, the Complainant notes that consistent low vacancy rates over a three year period are regarded by the City as a chronic vacancy situation. In support of this position, the Complainant has introduced CresaPartners reports for the subject property for each quarter of 2007, 2008 and 2009. These reflect vacancy rates ranging from 11.06% to 32.79% indicating an average three year vacancy rate of 17%. However, the Real Net Transaction Summary that records the sale of this property for \$10.3 million in November of 2007 indicates an occupancy of 89%, or 11% vacancy, as opposed to 17% vacancy reported by the Complainant's third party analysis for the same period as the sale. The Board feels that issues surrounding vacancy may well be related to the Complainant's submission for an increase in operating costs and accepts the City's application of an 8.5% vacancy rate.

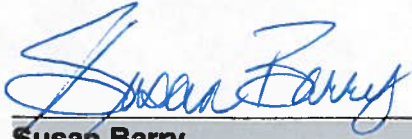
The Complainant requests an increase in operating costs from \$12 to \$14 per sq. ft, based on expenses that are deemed by him to be higher than the norm. The property manager indicated that actual costs in 2008 were \$13.86 per sq.ft. and that the 2009 budget was for \$15.51 per sq.ft. although there were no actual costs provided as of August 2010. An undated survey prepared by the property manager for Altus did not note any significant major capital repairs or corrections and noted that tenant charge backs of tax, operating costs and "other" exceed \$14 per sq.ft. However, there was no evidence to substantiate these costs in the form of a schedule of repairs that were performed or required and no invoices to show that any significant work was completed. On the other hand, the Complainant submitted the contested Rebuttal document which consisted of pictures of broken concrete drives, ponding on the roof (referred to as a leaking roof), original heating and ventilation equipment, aging carpet, windows with, apparently, broken seals, missing ceiling tiles, corroded pipes, and the like. On request by the City and subsequent to the November 2007 sale, the property manager noted that the only major repair or capital expenditure required was due to post tension cable replacement.

While the market may play some role in recently declining rents and increased vacancy, it appears from the evidence presented that wear and tear, a lack of maintenance and the general avoidance of capital item upkeep is responsible for these issues. There is no conclusive evidence to support a change in the assessment.

Board's Decision:

The Assessment is confirmed at \$7,670,000

DATED AT THE CITY OF CALGARY THIS 01 DAY OF October 2010.



Susan Barry
Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

NO.	ITEM
1.	Complaint Form for Roll #: 067136002
2.	Complainant's Assessment Brief
3.	Respondent's Assessment Brief
4.	Complainant's Rebuttal Brief

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.*