

**REVISED  
CALGARY  
COMPOSITE 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:

*D. Thomas, PRESIDING OFFICER*

*A. Blake, MEMBER*

*B. Jerchel, MEMBER*

This is a complaint to the Calgary Composite Assessment Review Board (CARB) in respect of the Property Assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>067062091</b>
<b>LOCATION ADDRESS:</b>	<b>1000 7 Ave SW</b>
<b>HEARING NUMBER:</b>	<b>60230</b>
<b>ASSESSMENT:</b>	<b>\$61,170,000</b>

This complaint was heard on 3rd day of August, 2010 at the office of the Assessment Review Board located at 4<sup>th</sup> Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- Daryl Genereux                      Altus Group Ltd.
- Givanni Worsley                      Altus Group Ltd.

Appeared on behalf of the Respondent:

- Walter Krysiniski                      Assessor, City of Calgary

### **Preliminary Matters:**

The subject is one of three Class B buildings scheduled to be heard in the week commencing August 3, 2010. The parties agree that the complaint issues and the assessor's response shall be substantially the same for each building, and that for the subject building, the parties shall present all evidence and arguments and the assessor's response. The parties agree these arguments shall be carried forth to the three remaining buildings, adapted to the specific characteristics of each. Any matter specific to the remaining B buildings shall be introduced when that building is placed before the Board for hearing.

### **Property Description and Background:**

The subject property is known as Plaza 1000 and is located at 1000, 7<sup>th</sup> Avenue SW. The building is primarily an office tower, ten stories in height, with a small area of retail space on the main level.

The assessment is made on 172, 832 sq. ft. of office space and 3,805 sq. ft. of retail space. Additionally, the assessment includes 277 parking stalls.

The assessment was determined by use of the income approach to market value. This approach to market value is not an issue at this hearing. However, a number of issues and sub-issues were raised concerning the valuation factors used by the City in the direct capitalization method of estimating market value.

### **Issues:**

In considering this complaint as filed, together with the representations and material presented by the parties, the specific issues addressed in this hearing are as follows:

1. Office rental rates
2. Applicable office vacancy rates
3. Applicable retail rental rates
4. The number of parking stalls
5. The area of the rentable office and retail areas
6. Applicable rental rates for parking stalls.

## 7. The appropriate overall capitalization rate

### **Complainant's Position:**

#### 1. Office Rentals

The Complainant seeks a reduction in office rent used in the assessment valuations from \$26 to \$18.50.

In support of this, an analysis of 32 leases was presented that displayed a weighted average of \$18.52. While the Complainant admits some leases may be post facto, Altus submits the assessor can't be blind to the fact of a large decline in rental rates occurring in the latter part of 2009 and yet continuing.

#### 2. Office Vacancy Rates

The Complainant gave evidence that there is oversupply in office space in Calgary that has led to escalating vacancy. Altus alleges there have been eight consecutive quarters of negative absorption, and nearly five million square feet of new space will be finished in the next two years. This, they say, has led to an overall office space vacancy of 12.6% and 51 % in the subleasing of office space.

This analysis shows that for all class "B" buildings, vacancy is at 14.7%

The Complainant states that while the 8% allowance for vacancy may be appropriate for "B+" buildings, for "B" buildings, a '17% vacancy is warranted.

#### 3. Retail Rental Rates

The Complainant suggested that the actual rent shown in the rent roll for the retail space of \$18 was the best reflection of market rents for such space as the lease was renegotiated at that rate within two months of the valuation date of July 1, 2009.

#### 4. The Number of Parking Stalls

The Complainant presented a BOMA source document Citing the number of parking stalls in the subject to be 244 and seeks to have the assessment reflect that.

The Complainant objected to the introduction of the response to the Request for Information sent out by the City. This information is provided to the City to enable it to build a database for mass appraisals, but otherwise, this information is the assessed person's alone and should not be used by the City against the owner.

#### 5. Rentable Areas for Both Office and Retail Space

The Complainant used the same BOMA publication to show the recorded office area is 157,613 square feet and the retail space is 2,420 square feet for a total of 160,033 square feet. These numbers were further borne out in the rent rolls provided to the City in the Complainant's RFI.

#### 6. The Applicable Rental Rate for Parking Stalls

The assessed rate of \$400 per stall is, Altus says, well in excess of what this property achieves and provides a report from Cresa Partners Realty advisors for 02 and 03 of 2009, showing this building's parking stalls only received \$380 per month if reserved and \$340 per month when unreserved. This, the Complainant alleges, supports the request for a \$375 per month valuation for parking in this building.

#### 7. The Appropriate Overall Capitalization Rate

The Complainant notes that there have been no sales of "B" buildings for some time. The only office building sales has been of three "A" or "AA" buildings. These are:

- a. Plains Midstream Building  
Sold October 2007 at a cap rate of 7.69%
- b. Gulf Canada Building  
Sold December 2007 at a cap rate of 8.03%
- c. 8 West Building  
Sold October 2007  
Cap rate based on 100% market rents: 8.27%  
Cap rate based on market rents only on vacant areas: 8.94%

This, Altus argues, produces a mean cap rate of 8.15%. However, there has been a historical hierarchy in cap rates for office buildings that "B" buildings are 0.5% higher than "A" class buildings. Thus, applying this traditional hierarchy to this property would show a proper cap rate of 8.50%.

The argument of the City that the 8 West sale was a judicial sale and therefore not to be considered as typical is erroneous. The fact is the sale was not ordered by the court, but only approved by the court. The sale was at the direction of the receiver-manager for the property, who marketed the building through the traditional market channels.

#### **Position of the Respondent:**

##### 1. Office Rentals

The Respondent notes that most of the Complainant's rents used in Altus' analysis were post facto. The assessor is bound by law to assess the value of the property as of July 1 and with the market evidence known to him at that time. While the assessor agrees there was a decline in rents by the end of that year, the City is not assessing the value at year's end.

The assessor states that the Complainant's own rental analysis, when pruned of post facto leases and confined to "B" (not "B+" and "B-") leases, supports this assessment.

The assessor provided his own rental analysis of 30 leases from "B" buildings. This included the lease dates from January 2008 up to July 2009. The product of this analysis was that the weighted mean for lease rate was \$27.80 per square foot, fully supporting the assessment. The downward trend of lease rents in late 2009 will be reflected in assessments in the subsequent year, not before.

The assessor says he is not blinding himself as to the market realities, but by legislation that the assessor cannot ignore, assessment is based on July values of the prior year.

## 2. Applicable Vacancy Rates

The assessor says the Complainant is wrong is adding sub-lease *vacancy* into *overall vacancy* considerations. Sub-lease space is presently income-earning space. When the sub-lease areas are *removed* from the Complainant's information, the remaining *vacancy* data is supportive of the assessment.

Additionally, the assessor provided data of leading realty advisors. Reported *vacancy* rates for "B" class buildings in the second quarter of 2009 were as follows:

Cresa	8.73%
Avison Young	7.20%
Colliers	7.40%
Barclay's	6.80%

## 3. The Appropriate Retail Rental Rate

The assessor states that \$32 per square foot is the assessed rate for all downtown retail space. The Complainant's evidence is of one lease only, which by itself, does not establish a typical lease rate.

## 4. The Number of Parking Stalls

The assessor argues the BOMA number for parking stalls is wrong. The best evidence for the number of stalls is the number the owner or agent placed on his/her reply to the Request for Information. The Complainant's RFI clearly shows 278 stalls are present on the property.

## 5. The Appropriate Rental Rate for Parking Space

The assessor notes all class "B" buildings were assessed at the same rate; that is \$400/month/stall.

The assessor also shows that Cresa Partners' report for the second quarter of 2009, that downtown reserved space for "B" buildings was \$419.58, which certainly supports the assessment.

Additionally, the assessor notes the City gave all parking stalls a 25% operating allowance *even* though typically operating expenses are much lower.

## 6. The Rentable Area for Office and Retail

The assessor confirms the assessment pro forma is in error is recording these areas. They concur in the *values* given by the Complainant of office (157,613 square feet) and retail (2,420 square feet) for a total of 160,030 square feet. The assessor recommends any Board decision should reflect these amended areas.

## 7. The Appropriate Overall Capitalization Rate

The assessor states that the use of the 8 West sale by the Complainant in Altus' cap rate analysis is wrong. That sale represented a distress sale, which may well have influenced the value.

The assessor concurs that no "8" buildings sold in 2009. However, there were four "8" buildings sold in 2008. These had sale cap rates ranging from 7.25 to 7.5%. The assessor states that in the absence of recent sales, the City looks more closely to industry advisors and notes that for the second quarter rates were:

Colliers 8% to 8.5%  
C8RE 8.75% to 9.25%  
Altus 8.1%

Accordingly, the Respondent believes the cap rate of 8% is appropriate.

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

1. The typical office rental rate for the subject "8" class office space is \$26 per square foot.
2. The typical rental rate for retail space in a "B" class building is \$32 per square foot.
3. The typical stabilized vacancy rate for the subject "B" class office space is 8%.
4. Assessment of 277 parking stalls is correct for this property.
5. The correct office area for the subject property is 157, 613.  
The correct retail area for the subject property is 2,420.
5. The typical rental rate for parking stalls for this "B" class building is \$400.
6. The appropriate overall capitalization to be employed is 8%.

**1. Office Rental Rate**

The Board finds that the Complainant's rental rate analysis is heavily weighted with leases of late 2009, a time that both parties acknowledge was seeing considerable decline in the market rental rates.

The assessor is required to assess as of July 1, 2009, and with the knowledge that would have been available to him at that time.

The assessor analysis of lease rates for the period up to July 1, 2009 is supportive of the assessed lease rate of \$26.00.

The Board believes this is the best evidence before it of the most appropriate office rental rates for assessment purposes.

**2. Office Vacancy Rates**

The Board agrees with the assessor that there is a distinction between vacancy in head lease vacant space and vacant sub-lease space.

The sub-lease space continues in contract and provides part of the revenue stream of the property. An excess of sub-lease space may have some impact on leasing rates, but otherwise should not be factored into an income-based valuation.

With that distinction, it would appear that even the Complainant's analysis would support the assessment.

The Board accepts the assessed rate as correct and fair.

### 3. Retail Rental Rate

The Complainant has based the reduction request on a single lease at \$18 per square foot. The Board does not find this sufficient evidence to *vary* the assessment rate. .

### 4. Number of Parking Stalls

The Board confirms the assessed number of stalls at 277.

The RFI is to secure information necessary to do the studies permitting mass appraisal, but it is also a means for the assessor to ensure the correct characteristics of the property are reflected in assessment. It would seem somewhat contradictory to use the RFI to allow correction to rental areas, but seek to bar its use by the assessor to confirm the owner's declaration of the number in favour of an industry publication that appears to be in error.

### 5. Rentable Areas for Office and Retail Space

The Board accepts the recommendations of the parties that the office area shall reflect 157,613 square feet of office area and 2,420 square feet of retail space. The Board decision reflects these numbers.

### 6. Parking Stall Rental Rate

The Board accepts the evidence of the assessor that \$400 per month per stall reflects a typical and fair *value* for parking in "B" buildings. The Complainant's request may reflect his/her actual rate, but that rate is not necessarily typical for such buildings.

### 7. Overall Capitalization Rate

Firstly, the Board finds that the use of the 8 West building as part of the cap rate study would be an error. The Complainant's statement that it was a court approved, not a court ordered, sale is a distinction with little difference. Default has led to creditors appointing a receiver-manager to liquidate assets to the benefit of creditors. These circumstances are beyond those of typical commercial transactions and the resulting value should not be used for assessment purposes.

The remaining two sales used by the Complainant indicate a cap rate of 7.86% for "A" buildings. Additionally, the assessor found four "B" buildings that sold in 2008 at cap rates between 7.25% and 7.5%. These sales (both of "A" and "B" buildings) indicate that the use of an 8% cap rate for 2010 is appropriate.

The Complainant notes there has been a hierarchy of cap rates that has "B" buildings about 0.5% higher than "A" buildings. The Complainant believes that all "A" building cap rates should be increased from 8 to 8.5% to maintain that hierarchy. The Board did not accept this premise because there is no evidence that there has been any variation in "A" building cap rates.

**Board's Decision:**

The assessment is amended to the sum of \$56,650,000.

DATED AT THE CITY OF CALGARY THIS 5 DAY OF October 2010.

  
D. Thomas  
Presiding Officer

DT/sd

*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.*