

**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, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, Presiding Officer

K. Kelly, Board Member

J. Massey, Board Member

These are complaints to the Calgary Assessment Review Board in respect of Property assessments prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

Name	Bow Valley Sq. 1	Bow Valley Sq. 2	Bow Valley Sq. 3 & 4
Address	202-6 Ave SW	205-5 Ave SW	255-5 Ave SW
Roll Number	068054402	068054303	068054295
Assessment	\$61,540,000	\$205,890,000	\$337,600,000
Hearing No.	58482	58484	58486

These three hearings relate to complaints against the assessments of the four office buildings that make up the Bow Valley Square complex. The buildings are numbered 1, 2, 3 and 4. Bow Valley Square 1 and 2 each have their own roll number and Bow Valley Square 3 and 4 are on one roll number.

These complaints were heard consecutively by a Composite Assessment Review Board (CARB) on the 27th and 28th days of September, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 7.

Appeared on behalf of the Complainant:

- D. Genereux & G. Worsley & S. Sweeney-Cooper

Appeared on behalf of the Respondent:

- W. Krynski & A. Czechowskyj

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

These were three of 17 hearings regarding Class A and AA office buildings in the Calgary downtown. At the outset, the Complainant requested a postponement because notice for these hearings had been relatively short and a number of personnel from the Complainant company (Altus Group) were unavailable to attend and provide evidence. No alternative dates were suggested for a continuation.

The Respondent objected to the CARB granting any postponement, arguing that both parties had agreed to these current hearing dates and that there had been sufficient notice. Further, there had already been hearings and decisions rendered on "global issues" which pertained to all of the Class A-AA office building complaints by this Complainant so these hearings were to address "site specific" matters for those properties where there were site specific issues. There was no exceptional circumstance for granting a postponement. The Complainant was aware of these hearing dates, having agreed to them, and the individuals who had prepared the evidence materials should have been present and prepared to proceed.

Decision of the CARB on the Postponement Request:

The CARB denied the request for a postponement of the hearings. These hearings had been scheduled for the week commencing September 27th, with agreement of both parties, so both parties should have been prepared. Having regard to the Complainant's argument that the individuals who were familiar with specific properties and who had prepared the evidence materials for those properties were unable to attend the hearings, the CARB is accustomed to receiving evidence and hearing argument from someone other than the individual who inspected the subject property and prepared the documents.

The CARB is concerned that a postponement of these hearings until late November, which appeared to be the only alternative hearing dates, would not be practical given the number of outstanding complaints and the December 31st deadline for issuance of written decisions.

The CARB informed the parties that it would make every effort to arrange the order of the hearings to accommodate the parties in having the appropriate individuals present.

Section 15(1) of the *Matters Relating to Assessment Complaints Regulation* prohibits an assessment review board from granting a postponement or adjournment except in exceptional circumstances. The reasons given by the Complainant in this postponement request were not considered to be exceptional circumstances.

The hearings proceeded on the morning of September 27, 2010.

Property Description:

The properties that are the subjects of these complaints comprise a four building Class A office complex located in the DT1 downtown submarket area. The buildings, collectively known as Bow Valley Square, occupy the full block bounded by 5 and 6 Avenues SW and by 1 and 2 Streets SW. The office towers rise above a three level retail podium that covers the full block. The assessment records show the following:

Name:	BVS 1	BVS 2	BVS 3-4
Year Built:			
Office Area:	134,818	479,139	729,880
Retail Lower Area	7,338	12,576	34,815
Retail Upper Area		3,697	32,439
Food Court Area		1,957	
Recreational Space Area		2,245	21,948
Theatre Space Area		3,312	
Storage Space Area	5,578	10,551	21,026
Total Rentable Area	149,132	513,477	840,108
No. of Parking Stalls	91	254	411

Note: All floor areas in Square Feet

Issues:

The Complainant raised the following matters in section 4 of the complaint forms:
Assessment amount (No. 3 on the form) and Assessment class (No. 4 on the form).

The Complainant also raised as many as 18 specific issues in section 5 of the Complaint form however, most of these related to global or common issues that had been issues for all Class A and AA office property complaints from this Complainant.

At this hearing, the Complainant carried forward all of the arguments regarding global issues. There were a number of site specific issues raised:

Bow Valley Square 1, 2, 3 & 4:

- *"There is a \$34 m. renovation taking place between the complex and the subject's share is 1/3 or \$11,333,000 that should be deducted.*
- *The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.*
- *The classification of the subject premise is neither fair, equitable, or correct."*

Bow Valley Square 3 & 4:

Add: > *"The recreational space should be 42,483 sq. ft. which comprises 6,581 sq. ft. for the child care centre and 35,902 sq. ft. for the Bow Valley Club."*

There was some disagreement about floor areas in Bow Valley Square 3 and 4 but there was no convincing evidence put before the CARB to support any changes from the areas in the assessment calculations.

Complainant's Requested Value:

Bow Valley Square 1 (File 58482): \$ 38,900,000

Bow Valley Square 2 (File 58484): \$175,700,000

Bow Valley Square 3/4 (File 58486): \$290,300,000

There were alternative requested values that varied according to specific and global issues.

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

Various Calgary CARB panels have heard the global or common issues evidence and argument at prior hearings regarding complaints against Class A-AA office building assessments and a number of decisions have been rendered in regard to those complaints.

The issues were:

1. Office Rental Rate
2. Vacancy allowance
3. Capitalization rate

The most recent decision, CARB 1657/2010-P, issued on 27 September 2010, dealt with each of these three issues. The findings and reasoning will not be repeated in this decision.

The findings on these three issues remain the same as in that prior decision.

The reasoning for the decisions based on the findings remains the same.

For details of the findings and reasons for decision, CARB 1657/2010-P should be read.

Renovation Costs:

The Complainant presented data from the property manager's website describing a \$34 million redevelopment program. It was described as a major redevelopment to both the main and +15 as well as to the lobbies of Bow Valley Square 2 and 3. The website stated that the redevelopment would commence in 2010 but the Complainant informed the CARB that it had commenced in August 2009. An email message included in the evidence stated that the redevelopment *"includes renovating BVS 1, 2, 3 office lobbies, both plus 15 and main floor retail (including food court) and the rotunda roof which is the plus 30 accessible roof running between all four towers."*

As part of the requested assessments on the subject three roll numbers, the Complainant divided the estimated \$34,000,000 total cost by 3 and allocated \$11,333,000 to each roll number.

In addition, the Complainant stated that vacancy due to the ongoing redevelopment was at 26%. It was requested that the vacancy allowances in the assessment calculations be amended to 8% for office and 15% for retail on both the main and upper floors.

In support of a reduction for the redevelopment costs, the Complainant referenced a 2001 decision (DL 078/01) of the Municipal Government Board (MGB) wherein the MGB found that necessary reconstruction costs were reasonably deductible for assessment valuation purposes.

The Respondent explained that there is a City of Calgary assessment policy that renovation costs are not deducted in making assessments and this situation is a typical one wherein costs are being incurred in order to achieve higher rents from tenants. In the response to a question to the Complainant, it had been stated that the redevelopment was for deferred maintenance to sustain the property's market position.

Classification:

The focus of this argument was on Bow Valley Square 1 and the retail space on the main and second levels. Bow Valley Square 1 is the smallest of the four office buildings in the complex. The Complainant argued that its 1972 year of construction, height of 17 storeys and floorplate of 7,930 square feet put it into the A- classification. In the A+ class, the average building height is 33 storeys, average year of construction is 1982 and average floorplate is 17,000 square feet, all much superior to the subject Bow Valley Square 1. If reclassified to A-, the office rents used in making the assessment would be \$24 per square foot which is \$6 less than the rate applied for the building as a Class A+.

Having regard to the retail space in Bow Valley Square, the Complainant drew a comparison to retail space assessments on the 8th Avenue (Stephen Avenue) Mall. The City assessors recognized the superiority of the Mall retail space by applying a lower capitalization rate in the valuations. Drawing from rent comparables used by the City in other assessment complaint hearings, the Complainant isolated lease data from Bow Valley Square and compared it to retail lease data from the Mall and other buildings. The conclusion was that three main floor leases and seven 2nd floor leases in Bow Valley Square indicated a weighted average rental rate of \$28 per square foot, compared to a weighted average of \$44 to \$47 for properties like TD Square and Scotia Centre (both on the Mall).

For the argument regarding reduction of the classification of Bow Valley Square 1, the Respondent argued that the building is a part of the Bow Valley Square complex and it shares the main and +15 level retail podium with the other three buildings. A summary of 2008 and 2009 lease transactions showed that Bow Valley Square 1 gets the same office rents as 2, 3 and 4. Similar comparisons showed that there was no distinction between retail rents within the complex. The measure of the performance of a property is its ability to generate income and Bow Valley Square 1 has the same ability as the other three buildings even though it is smaller in total size, height and floorplate size.

Speaking to the Complainant's charge that Stephen Avenue Mall retail space is superior and is treated differently by City assessors, the Respondent pointed out that a lower capitalization rate is applied on the Mall because of the nature of the development which is more like a regional shopping centre. It comprises three levels of high quality retail space that covers a two to three block area. Rents are set at typical levels for retail space in Class A buildings and the Bow Valley Square retail space is comparable to that in other Class A buildings. Comparisons must be made to other similar Class A buildings and not just to those on the Stephen Avenue Mall.

Recreational Space:

The Complainant argued that the Bow Valley Club, childcare centre and conference centre are amenities to the Bow Valley Square complex and should therefore be assessed at \$0 or at worst, at a low rent rate. It was requested that the rate be reduced from \$16 to \$0 or \$10 per square foot.

The Respondent stated that this same argument had been considered in the hearing that resulted in

decision CARB 1657/2010-P and therefore should not be considered any further in this hearing.

Findings:

The CARB has addressed the findings and decision regarding global or common issues previously in this decision. There are no changes made to any of the Bow Valley Square assessments for the three issues set out on Page 4. The CARB also finds that there is no adjustment to be made for what is termed recreational space by the Complainant. CARB Decision 1657/2010-P fully explained the reasoning behind confirming the rates and assessment procedures used in assessing recreational and conference space. The CARB finds that there should be no different treatment given to space used as a childcare facility. The Complainant provided floor areas for this space that were different than those used by the Respondent. Rent rolls in the Complainant's evidence showed various rental areas on the 2nd and 3rd levels of the retail component. Some of these were shown as "office" while others were shown as "retail." There was insufficient detail provided to the CARB on which a decision regarding the correct area could be made. The CARB suggests that floor area discrepancies are typically a matter to be resolved by the parties.

Renovation Costs:

The CARB notes the MGB decision (DL078/01) referenced by the Complainant. The MGB allowed a deduction for the costs of reconstruction of the exterior of the building and improvements to the north cantilever which were necessary to bring the building to a rentable condition. In the same decision, however, the MGB found that reconstruction of portions of the building interior were not necessary improvements but rather management decisions made in the interest of increasing rentable space. It was concluded, *"The MGB is unwilling to allow deductions for reconstruction designed to increase profitability and performance, when there are no structural or safety concerns associated with these improvements."* This CARB finds that the improvements being made within Bow Valley Square are in the category of not being necessary for structural or safety reasons. Therefore, the costs of such improvements are not a legitimate deduction from value for assessment purposes.

Classification:

The CARB accepts the evidence and argument of the Respondent with regard to this issue.

Bow Valley Square 1 may be the smallest and oldest building in the complex but it is capable of generating similar rents to the other three, larger and newer buildings. Lease data supports this finding.

With respect to retail space, the rents being achieved in the retail areas are comparable to those for similar space in similarly located Class A buildings. It is not reasonable to compare Bow Valley Square retail space to only space in intensively retailed buildings located on Stephen Avenue Mall. Numerous 2007-2008-2009 leases in the subject property supported the rates used by the Respondent for retail and food court space.

Board's Decision:

The 2010 assessments of the three subject roll numbers are confirmed:

Bow Valley Square 1:	\$ 61,540,000
Bow Valley Square 2:	\$205,890,000
Bow Valley Square 3 & 4:	\$337,600,000

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 26 DAY OF October 2010.



W. Kipp, Presiding Officer

SUMMARY OF EXHIBITS

Exhibit

C1A Assessment Review Board Complaint Form – 068054402
C1B Assessment Review Board Complaint Form – 068054303
C1C Assessment Review Board Complaint Form - 068054295
C2 Evidence Submission of the Complainant – 068054402
C3 Evidence Submission of the Complainant – 068054303
C4 Evidence Submission of the Complainant - 068054295
R1 Respondent's Assessment Brief – 068054402
R2 Respondent's Assessment Brief – 068054303
R3 Respondent's Assessment Brief - 068054295
Plus previously filed documents regarding global or common issues.

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.*