

**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

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: 058213000

LOCATION ADDRESS: 440 – 2 Avenue SW, Calgary AB

HEARING NUMBER: 57477

ASSESSMENT: \$224,280,000

This complaint was heard on the 28th day 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

Appeared on behalf of the Respondent:

- W. Krynski & A. Czechowskyj

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

This was one of 17 hearings regarding Class A and AA office buildings in the Calgary downtown that were scheduled to be heard during the week of September 27 to October 5, 2010. 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.

Property Description:

E & Y Tower: A 451,566 square foot Class AA office building on a 48,976 square foot site in the DT1 market area of downtown Calgary. Total rentable area includes 15,296 square feet of retail space on the +15 level. There are 277 underground parking stalls. The 23 storey office building was completed in 2000.

Issues:

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

The Complainant also raised 18 specific issues in section 5 of the Complaint form but at the hearing, focused on three issues:

1. *The assessed office area should be 415,418 sq. ft.*
2. *No lower floor retail space it is all office space. Therefore, the lower floor office should be 5,587 sq. ft. @ \$30 p.s.f.*
3. *The assessed Upper Retail area of 15,296 @ \$50.00 p.s.f. should be assessed as follows:*
 - a. *Upper retail area of 1,272 sq.ft. (Second Cup) @ \$50.00 p.s.f.*
 - b. *2nd floor office area of 10,699 sq.ft. (Cargill) @ \$30.00 p.s.f.*
 - c. *2nd floor E&Y Tower Meeting Room of 3,325 sq.ft. @ \$10.00 p.s.f.*

The Complainant also carried forward all of its evidence and argument on global issues for Class A-AA office buildings.

Complainant's Requested Value:

\$170,100,000 – based on global and specific issues

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

The Complainant argued that there is no main floor retail space in this building. For that reason, 5,587 square feet of main floor rentable area should be assessed as office space. Based on the global request of the Complainant, that space should be assessed on the basis of a \$30.00 per square foot rental rate. The assessed office area should be 415,418 square feet rather than the 421,005 square feet shown in the assessment summary.

On the +15 level, there is only one retail tenant – Second Cup, occupying 1,272 square feet. That space can continue to be assessed on the basis of \$50.00 per square foot but the 10,699 square feet occupied by Cargill and the 3,325 square feet in the conference centre should be valued using lower rental rates - \$30.00 per square foot for the Cargill space and \$10.00 per square foot for the conference centre space. A November 2009 rent roll attached to the Complainant's evidence brief showed leasing for the disputed areas. Leases had commencement dates in 2001 and 2004.

For the conference centre, the Complainant relied upon evidence that had been filed previously for global issue arguments.

There was no further evidence or argument on the issues.

Respondent's Position:

Firstly, the Respondent addressed the global issues and the Complainant's argument regarding conference centre assessment. All of these issues had been heard and decided upon. CARB decisions 085/2010-P and 1657/2010-P were referenced. These decisions had considered the amenity space issues.

Having regard to the rentable office area and main floor space, the Respondent pointed out that the 421,005 square feet of office space included the 5,587 square feet on the main floor. The areas set out by the Complainant of 415,418 plus 5,587 square feet, when added together amount to the assessed area of 421,005 square feet and all of it was assessed at the Class AA office rental rate.

On the +15 level, a tenant may be using some of the space for offices but it is retail space and could be put to some type of retail use. The full +15 floor area is assessed at the rate applied to +15 retail space in Class AA buildings.

Findings

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 rental rates, vacancy allowance rates and capitalization rate for Class A and AA properties were all found to be reasonable.

The reasoning for this decision, based on the findings, remains the same as in CARB 1657/2010-P. For details of the findings and reasons for decision, CARB 1657/2010-P should be read.

The matter of conference centre assessments has also been addressed previously.

CARB 1657/2010-P dealt with the Complainant's argument that a fitness centre was an amenity for building tenants and therefore should not be assessed or, at the most, be assessed at a low rental rate. Similar arguments have been made in regard to conference centre or meeting room assessments. In this instance, perusal of the rent roll in the Complainant's evidence shows that the

E&Y Tower Meeting Rooms were subject to a lease from 2001 to 2016 at a net rental rate that is not dissimilar to the rate applied for other space in the building. The CARB finds that the +15 space has the capability of being rented and occupied as retail space and therefore upholds the assessment rate applied.

The CARB has no compelling evidence before it to bring about any changes in assessment rates for the subject building's retail space. The matter of office space area has been resolved by the explanation of data in the assessment summary and is therefore confirmed as well.

Board's Decision:

The 2010 assessment is confirmed at \$224,280,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 28 DAY OF OCTOBER. 2010.



W. Kipp
Presiding Officer

SUMMARY OF EXHIBITS

Exhibit

Prelim. C1 Emails Re: Complainant's Postponement Request
C1 Assessment Review Board Complaint Form with Attachments
C2 Evidence Submission of the Complainant
R1 Respondent's Assessment Brief
Plus Previously Filed Documents regarding global issues for Class A-AA offices

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.*