

**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: 068034693

LOCATION ADDRESS: 140 – 4 Avenue SW, Calgary AB

HEARING NUMBER: 58500

ASSESSMENT: \$252,310,000

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:

Sun Life Plaza - West: A two building 619,554 square foot Class A office building on a 57,885 square foot site in the DT1 market area of downtown Calgary. Total rentable area includes retail space of 7,289 square feet on the main floor and 1,032 square feet on the +15 level. There are 354 underground parking stalls. The 28 storey office buildings were completed in 1980.

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 two issues:

1. Operating costs for calculating vacancy shortfall
2. Retail rental rates – Upper and Lower floors

Parking stall rate had been mentioned as an issue but there was no evidence presented or any further argument for any change in rental rate or number of stalls.

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

Complainant's Requested Value:

\$212,330,000

Board's Decision in Respect of the Issues:

Complainant's Position:

The Complainant provided a lease summary for the property. On May 1, 2008, the lease on 1,051 square feet of main floor retail space in the north building commenced at a rental rate of \$30.00 per square foot, escalating to \$32.00 per square foot after the second year of the term. In the east tower (not part of this complaint), some 2008 lease commencements in food court space were at rates of \$45.00, \$60.00 and \$65.00 per square foot. From an equity perspective, the Complainant included in evidence a number of assessment summaries for other downtown buildings where there was retail space. In these other properties, assessments were made using retail rental rates from \$21 to \$32 per square foot. All of this evidence was support for the request that retail space in the subject property be assessed using a \$30.00 per square foot rental rate.

The rent rolls showed that tenants were billed \$12.98 per square foot for operating expenses plus \$6.24 per square foot for realty tax in the north and west towers. Based on these charges, the Complainant requested that the operating cost amount for calculation of vacancy shortfalls be increased from \$17.50 to \$19.00 per square foot.

Respondent's Position:

Firstly, the Respondent addressed the global issues and the Complainant's argument. All of these issues had been heard and decided upon. CARB decisions 085/2010-P and 1657/2010-P were referenced.

The Respondent included a copy of the ARFI response in evidence. For a 1,032 square foot retail space on the +15 level of the north tower, Second Cup had started a lease in February 2008 at \$42.00 per square foot. On the main floor of the west tower, the Royal Bank of Canada started a lease on 3,875 square feet in May 2007 at \$35.00 per square foot. While these leases were not within the one year period leading up to the July 1, 2009 valuation date, the Respondent stated that they supported the rates used on retail space in making the assessment. It was added that retail space, like any other space, is assessed using "typical" rates and the rates used are typical in Class A buildings.

The same "typical" argument was put forward regarding operating costs. The Respondent does an analysis of these costs and uses industry reports to verify their accuracy. A report by CresaPartners for the second quarter of 2009 showed that the average cost in Class A buildings was \$17.60 per square foot and that supported the \$17.50 rate adopted for assessment calculations. Further, management can impact operating costs from one property to another.

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.

Global 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 issues. The findings and reasoning will not be repeated in this decision.

The findings on these global issues remain the same as in prior decisions. 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.

There was a limited number of new leases in the subject property retail area and those that were discussed were unconvincing as far as possible changes to the assessed rates were concerned. Some of the Complainant's equity evidence did show that assessments in various buildings in downtown were prepared using different rates for retail space, however, the comparisons between the subject and those comparables was insufficient to convince the CARB that the rates used in the subject were incorrect. It was not clear whether all of the other buildings were Class A-, A or A+. Most of those other properties were in different downtown market areas and those locational

differences could have impacted on rental rates.


The Respondent's argument and evidentiary support for operating costs was compelling. There are many factors that can impact on costs. Unless there is an exceptional circumstance for increasing the cost rate, the typical rate should be used. It is appropriate that all buildings within a class should be valued using "typical" rates and cost amounts.

Board's Decision:

The 2010 assessment is confirmed at \$252,310,000.

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
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.*