

**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: 068077601

LOCATION ADDRESS: 321 – 6 Avenue SW, Calgary AB

HEARING NUMBER: 59564

ASSESSMENT: \$182,720,000

This complaint was heard on the 29th 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 & G. Worsley

Appeared on behalf of the Respondent:

- 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:

Energy Plaza: A 459,067 square foot Class A office building on a 42,190 square foot site in the DT1 market area of downtown Calgary. Total rentable area includes retail space of 9,203 square feet on the main floor and 12,790 square feet on the +15 level. There are 189 underground parking stalls. The 18 storey office building was completed in 1980. The building is connected to Calgary's downtown +15 system.

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 13 specific issues in section 5 of the Complaint form but at the hearing, focused on two issues:

1. *"Main floor & Second floor – median new deals median \$33 p.s.f. say \$35*
2. *The storage rent should be \$2 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:

\$165,200,000

Board's Decision in Respect of the Issues:**Complainant's Position:**

The Complainant provided a tenant list that showed a number of retail space leases that commenced between March 2006 and April 2008. Rental rates for main floor retail spaces of 582 to 4,930 square feet were from \$29.00 to \$33.00 per square foot pursuant to leases that commenced in late 2006 and mid-2007. On the second (+15) level, four other leases on areas from 403 to 1,093 square feet started at rents from \$30.00 to \$36.00 per square foot with lease commencements from March 2006 to April 2008. The 2008 lease was at the \$36.00 rate.

The median of the seven 2006-2008 rates was \$33.00 per square foot which supported the Complainant's request for all retail to be assessed at \$35.00 per square foot rather than at the rates of \$40.00 for main floor space and \$50.00 for second floor space.

Two entries in the July 2009 rent roll were highlighted. These were leases on storage space. On the main floor, 2,490 square feet of space were leased at \$2.00 per square foot, net. Operating costs and realty tax added \$13.18 per square foot. The lease commenced in November 2004. The second lease was for 100 square feet of storage space on the 19th floor. That lease, which started in April 2007 specified a gross rental of \$125 per month which equated to \$15.00 per square foot.

In rebuttal to the Respondent's evidence on storage space rents, the Complainant noted that the assessment is based on a higher net rental rate (\$10.00 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 pointed out that the Complainant's retail rental information was dated – the most recent lease was from April 2008 and even that was outside of the one year analysis period leading up to the July 1, 2009 valuation date. The subject is a Class A building and the Respondent's market analysis indicated that typical retail rents for Class A buildings is \$40.00 per square foot for main floor space and \$50.00 per square foot for second (+15) floor space.

For the storage, the Respondent pointed out that there was just one lease in the Complainant's evidence and that was dated (2004).

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.

The CARB does not accept the Complainant's evidence and argument regarding retail rental rates. The lease data in evidence is dated and of no use in determining appropriate rates for July 2009. If there was insufficient lease data from within the subject property, data on leases in comparable buildings would have been given consideration.

The CARB finds no evidence to change the rate on storage space. The assessment is based on \$10.00 per square foot and an operating cost allowance of \$5.00 per square foot is used. That implies a \$15.00 per square foot gross rental rate. The Complainant produced two actual leases. These were dated leases (2004 and 2007) but when gross rental is taken into account, they equate to \$15.00 and \$15.18 per square foot.

Board's Decision:

The 2010 assessment is confirmed at \$182,720,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 2 DAY OF November 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.*