

**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: 067235101

LOCATION ADDRESS: 400 – 3 Avenue SW, Calgary AB

HEARING NUMBER: 58516

ASSESSMENT: \$412,950,000

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

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:

Canterra Tower: An 842,822 square foot Class AA office building on a 70,399 square foot site in the DT1 market area of downtown Calgary. Total rentable area includes retail space of 7,867 square feet on the main floor and 6,888 square feet on the +15 level. There are 448 assessed underground parking stalls (see Issues). The 46 storey office building was completed in 1987. 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 19 specific issues in section 5 of the Complaint form but at the hearing, focused on three issues:

1. *"The assessed lower retail space should be 4,526 with a market rate of \$30.00 p.s.f. while the upper retail space should be 6,813 with a market rate of \$30.00 p.s.f.*
2. *There should be only 419 parking stalls assessed.*
3. *There should be a capital deduction of \$2.7 m for elevator modernization and curtain wall replacement."*

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

Complainant's Requested Value:

\$408,200,000

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

The Complainant provided a tenant list that showed total office area of 806,100 square feet, main floor retail area of 4,526 square feet and +15 retail area of 6,813 square feet.

A rent roll showed a number of retail space leases that commenced in 2008.

Unit 100	934 sq. ft.	Dec 2008	\$30 to \$34 over 10 year term
Unit 120	652 sq. ft.	June 2008	\$30 to \$40 over 10 year term
Unit 260	567 sq. ft.	July 2008	\$40 to \$50 over 5 year term
Unit 270	3,334 sq. ft.	August 2008	\$25 to \$30 over 10 year term

On the rent roll, 2,653 square feet of retail space on the main floor were shown as office space, leased to one of the major tenants in the office tower. Part of the Complainant's argument for lower rates on retail space related properties on the Stephen Avenue Mall (8th Avenue Mall) to others not on the Mall. Copies of tables provided at another complaint hearing by the Respondent were used

to show dissimilarities in properties. Lease data from Bow Valley Square, a four building complex on 5-6 Avenues SW was related to data for tenants in TD Square and Scotia Centre, two properties on the Mall. Rent rates were different. The capitalization rates used in preparing the assessments were different. It was the Complainant's contention that the lower capitalization rate applied to Mall properties clearly showed the superiority of those properties and therefore, similar rental rates should not be applied to properties not on the Mall. The average rents from Bow Valley Square (main and +15 levels) were around \$28 per square foot which supported the request for a \$30 rate for Canterra Tower.

When the 2009 ARFI response was returned by the property manager, it apparently indicated an incorrect number of parking stalls (448). The Complainant maintains that this error was corrected and 419 stalls were reported for 2010. It was requested that the assessment which is the subject of this complaint be changed to reflect 419 stalls. A Rebuttal document contained a number of email messages regarding the number of parking stalls. The property manager suggested that the 448 number came from the parking operator who may have misunderstood the situation.

The Complainant's evidence included a copy of an undated form that was apparently completed by someone at Oxford Properties Group at the request of Altus Group. On the form, it was stated that major capital expenditures of \$2,700,000 were required for elevator modernization and curtain wall repair. The Complainant requested that this amount be deducted from the assessment.

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 evidence and argument regarding retail rental rates was flawed because it dealt with Class A buildings and the subject is a Class AA building. The major properties on the Stephen Avenue Mall were assessed using a 7.25% capitalization rate because the major retail facilities in Calgary Eaton Centre, TD Square and Scotia Centre are three level retail centres with characteristics much like those of a regional shopping centre. By comparison, Class A office buildings were valued using a 7.5% capitalization rate. Class AA office buildings are assessed using a 7.0% capitalization rate.

The response to the 2009 ARFI indicated that there were 448 parking stalls. The Respondent relies on the taxpayers' responses and it was on the basis of this response that 448 parking stalls were assessed to the property. If an adjustment was to be made to change the number of stalls, the variance in the assessment would be insignificant at less than one half of one percent.

The Respondent would require more detail on the capital expenditure before considering any recognition of it in the assessment. At this point, it seems that the expenditure is only for deferred maintenance and assessments are not adjusted for deferred maintenance expenditures.

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 few 2008 leases in Canterra Tower are insufficient to show that the assessment rates applied are incorrect. The CARB could not rely on the other argument of the Complainant because that argument related to Class A properties whereas the subject is a Class AA building.

There may very well be only 419 parking stalls in the building but that is still not clear. The messages from the property manager attempted to explain how the parking lot operator might have misinterpreted the ARFI request. Nevertheless, the number reported to the Respondent was 448 on the 2009 ARFI response and that is the number that was assessed for that year. For 2010, the number has changed to 419 so the next assessment should reflect that number.

The Complainant's argument on the deduction of \$2,700,000 is unacceptable. There must be more explanation of the expenditure. For example, it is not known whether any of the money has been spent. It is not known when the property manager reported the expenditure amount. There is no support for the amount by way of contractor quotations, receipts or other documentation. The CARB cannot consider the expenditure as a legitimate deduction without having much more evidence for consideration and if the expenditure is only for deferred maintenance items, that is not commonly allowed as a deduction.

Board's Decision:

The 2010 assessment is confirmed at \$412,950,000.

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
C3 Complainant's Rebuttal Evidence
C4 Complainant's Assessment Calculations
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.*