

**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, Section 460(4), Revised Statutes of Alberta 2000 (the Act).

between:

Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

T.Hudson, PRESIDING OFFICER

B.Jerchel, MEMBER

R. Deschaine, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of a Supplementary Property Assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 201027760

LOCATION ADDRESS: 207 9th Avenue SW

HEARING NUMBER: 60490

**SUPPLEMENTARY ASSESSMENT: \$155,210,000, prorated for 5.5 months or
\$71,137,920.**

This complaint was heard on the 29th day of March, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- G. Worsley
- D. Genereux
- G. Krysinski

Appeared on behalf of the Respondent:

- A. Czechowsky
- H. Neuman
- W. Kazinski

Property Description

The subject property is known as "Penn West Plaza" and consists of two(2) office towers located in downtown Calgary at 207 9th Avenue SW. Only the west tower is subject to the Supplementary Assessment. The west tower includes 615,212 square feet of office space, 13,117 square feet of retail space, 8,620 square feet of recreational space and 368 parking stalls. The supplementary assessed value of the west tower is \$155,210,000 pro-rated for 5.5 months or \$71,137,920., based on the capitalized income approach to value, and using Class"AA" building assessment parameters. The Complainant's requested value pro-rated for 5.5 months is \$54,320.554, based on the capitalized income approach to value, but using Class "A" building assessment parameters.

Issues

Should Class"AA" or Class "A" building assessment parameters be applied to calculate the Supplementary Assessment value for the subject property?

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

The Respondent raised three procedural/jurisdictional matters for consideration by the CARB.

Procedural Matter #1

The Complaint before the BOARD amounts to a "rehearing" of a complaint on the same roll number and on the same issue, heard and decided in October 2010 through CARB decision 1962/2010-P. As a result, the Respondent suggested that proceeding with the merit hearing on the Supplementary Assessment is both unnecessary, and inappropriate, and that the Complaint should be dismissed, and/or the Supplementary Assessment confirmed.

Procedural Matter #2

If the CARB determines that the merit hearing on the Supplementary Assessment can proceed, evidence from the Complainant should be limited by the CARB to only that

which is relevant to the issue of the correct class of the subject building.

Procedural Matter #3

If the CARB determines that the merit hearing on the Supplementary Assessment can proceed, the Respondent requests that their evidence be "sealed" in order to protect confidential information.

EVIDENCE AND PARTY POSITIONS WITH RESPECT TO PROCEDURAL MATTER#1

Complainant: The Complainant argued that the Supplementary Assessment is a new assessment and the ratepayer has a right to a hearing of their complaint. The decision referred to as CARB 1962/2010-P does not refer directly to the issue of the "class" of the subject property, but only to confirmation of the assessment based on the opinion that the property is not "over assessed".

Respondent: The Respondent submitted three(3) exhibits in support of their position. The exhibits were admitted with no objection from the Complainant as follows:

Exhibit R-1 (ie page 25, item 106 of the Complainants disclosure document with respect to the Supplementary Assessment): indicates that the only issue the Board is asked to decide is whether or not the property should be reclassified as Class "A".

Exhibit R-1 (ie page 25, items 104, and 105 of the Complainants disclosure document with respect to the Supplementary Assessment): indicates that there is "no dispute" between the parties regarding the parameters, calculations, or procedures for Class 'AA" or Class"A" properties, or in the assessment pro-rating.

Exhibit R-2 (ie page 2 of 5 from CARB 1962/2010-P): indicates that the only issue before that Board was the Complainants position that the subject building should be assessed as a Class "A"

Exhibit R-3 A copy of the Complainant's Court of Queens Bench application for leave to appeal the CARB 1962/2010-P decision.

BOARD DECISION ON PROCEDURAL MATTER#1

Following the presentations by the parties, the BOARD concluded that the Complaint on the Supplementary Assessment for the subject property is the same as the complaint heard and decided on the subject property by a CARB in October of 2010. That is, should Class "AA' or Class"A" assessment parameters be applied to the subject property to determine its assessment value using the capitalized income approach. There is no doubt that the CARB1962/2010-P decision confirmed the assessment for the same subject property based on the assessment parameters for Class"AA". The CARB therefore concurs with the Respondent, that it is both inappropriate and unnecessary to proceed to another merit hearing on the Supplementary Assessment complaint, when it is clear that CARB1962/2010-P has already concluded that Class"AA" assessment parameters apply to the subject property. It is also clear, that the Complainant is seeking

leave to appeal the CARB 1962/2010-P decision to the Court of Queen's Bench, the only avenue for appeal of assessment review board decisions provided by the MGA.

BOARD DECISIONS ON PROCEDURAL MATTERS #2 AND #3.

Given the BOARD decision that the merit hearing with respect to the Supplementary Assessment complaint would not proceed, it is not necessary to resolve the other procedural matters raised by the Respondent.

Board's Decision: The Supplementary Assessment is confirmed at \$155,210,000 prorated for 5.5 months or \$71,137,920.

DATED AT THE CITY OF CALGARY THIS 5 DAY OF APRIL 2011.


Mr. T. Hudson
Presiding Officer

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.*