

**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).

between:

Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

B. Horrocks, PRESIDING OFFICER

J. Rankin, MEMBER

J. Mathias, 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:	201499597
LOCATION ADDRESS:	1100 1 ST SE
HEARING NUMBER:	60589
ASSESSMENT:	\$21,180,000

This complaint was heard on the 19th day of April, 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:

- Mr. D. Mewha (Altus Group Ltd.)

Appeared on behalf of the Respondent:

- Mr. D. Grandbois
- Mr. R. Fegan

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

The Complainant advised that on August 5, 2010 a Hearing had been held and a decision rendered on the 2010 Assessment for this property (ARB 1085/2010-P). In its decision the Board found that the subject building was incomplete and further that the unoccupied space in the building should be assessed at 50% of the Net Rental Value.

The Complainant suggested that the approach currently being taken by the Assessor is an attempt to amend the original Assessment through this hearing process as opposed to preparing the Supplementary Assessment in conformance with the Municipal Government Act (MGA) Sections 314 (2), (3) and (4).

The Complainant further suggested the Board should only be concerned with what has changed from the Annual Assessment and what are the correct dates for determining pro ration.

The Respondent advised that the Hearing should proceed and that they would be submitting a revised value for the Supplementary Assessment, "in the spirit of the decision rendered in ARB 1085/2010-P."

The Board advised the parties that this Hearing was convened to hear a complaint of a 2010 Supplementary Property Assessment and as such they would be guided by the relevant Legislation in MGA Sections (2), (3) and (4) and more specifically:

MGA 314 (2) the assessor must prepare supplementary assessments for other improvements if

- (a) they are completed in the year in which they are to be taxed under Part 10,*
- (b) they are occupied during all or any part of the year in which they are to be taxed under Part 10, or.....*

MGA 314 (3) A supplementary assessment must reflect

- (b) the increase in the value of an improvement since it was last assessed.*

MGA 314 (4) Supplementary assessments must be prepared in the same manner as assessments are prepared under Division 1, but must be prorated to reflect only the number of months during which the improvement is complete, occupied, located in the municipality or in

operation, including the whole of the first month in which the improvement was completed, was occupied, was moved into the municipality or began to operate.

The Board cautioned the parties that it did not wish to rehear the materials presented at the previous CARB Hearing.

The merit hearing proceeded.

Property Description:

The subject property is a 1.63 acre parcel located in the Beltline community in SE Calgary. The site contains a newly constructed 14 storey office tower with retail on the main floor. When completed and fully occupied the building will contain a net rentable area of 280,843 sq. ft. The building was not fully complete as of the condition date of December 31, 2009.

Issues:

The Assessment Review Board Complaint form contained 13 reasons for Complaint, but at the outset of the hearing the parties advised there was only one outstanding issue, namely; What is the value of the additional finished space that has been determined to be occupied (or occupiable) in 2010?

Complainant's Requested Value: \$8,890,000.

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

Issue What is the value of the additional finished space (102,702 sq.ft.) that has been determined to be occupied (occupiable) in 2010?

The Complainant submitted Evidence Submission labelled C-1.

The Complainant provided a brief history of the construction of the building using photographs in Tab 1 to demonstrate that the building was still incomplete in March of 2011.

The Complainant, at page 16, provided ARB 1085/2010-P to demonstrate that the finished portions of the building, at the time, had been assessed at 100% and the unfinished shell had been assessed at 50%. The value of the unfinished shell had been determined by utilizing 50% of the Net Market Rental Rate in the Income Approach To Value to calculate the Potential Gross Income (PGI).

The Complainant, at page 26, provided MGA Section 314 with specific reference to 314 (2) which requires that the assessor must prepare supplementary assessments for other improvements if they are completed in the year they are to be taxed and they are occupied in all or any part of the year in which they are to be taxed. He went on to provide definitions of complete and occupied, and argued that a building cannot be occupied if it is not occupiable, and more importantly, it is not occupiable if an occupancy permit has not been issued.

The Complainant, at page 59, provided ABQB 512 and highlighted paragraphs [27] and [29].

The Complainant, at page 75, provided a copy of MGB 088/10 in support of his argument. The MGB in its findings had asserted that "when an area is not occupiable, it is not complete." To provide further clarity, the Complainant, at page 124, provided a copy of CARB 2009/2010-P, wherein the Board found that "when an occupancy permit has been issued and cannot be occupied because the tenant improvements have not been installed, the area is not complete and should not be fully 100% assessed."

The Complainant, at pages 147 thru 151 provided Income Approach to Value calculations for the additional spaces which had been occupied in 2010. He noted the Market Net Rental Rate utilized was 50% of the assessed rental rate in consideration of ARB 1085/2010-P, and the parameters for Vacancy, Operating Costs, Non Recoverables and Capitalization Rate were the same as those utilized in the annual assessment.

The Complainant, in Tab 3, provided the occupancy permits for the additional spaces to support the prorated value calculations which are summarized on page 152. The calculations conclude the Total Supplemental Assessment is \$8,896,667,

The Respondent submitted Assessment Brief labelled R-1.

The Respondent, at page 135, provided 2009/2010 Annual and Supplementary Timeline for the subject, and noted that the 2010 CARB appeal did not have the benefit of the written reasons from the 2009 Supplementary appeal to the MGB. In addition, the Respondent, at page 198, provided a Board Order Status which identifies outstanding issues regarding unfinished space that have yet to be concluded.

The Respondent explained that the Supplementary Assessment Calculation on page 201 was prepared using a "top down approach", vis a vis, the Total Assessment (\$102,550,000) was calculated, utilizing the Income Approach to Value, presuming the building was 100% complete, and deducting the Annual Assessment as determined by ARB 1085/2010-P (\$81,364,000) resulting in the Supplementary Assessment Notice of \$21,180,000.

The Respondent argued that the 50% rental rate reduction for unfinished space articulated in ARB 1085/2010-P was generous and provided a Supplementary Assessment Revision on page 202. The Revision employed a similar methodology as the Supplementary calculation. The Total Assessment as if fully completed (\$102,550,665), less a \$50 per square foot allowance for tenant improvements yet to be completed (\$1,529,150) yielding a Total Value for the "as is" condition of \$101,021,515. Deducting the Annual Assessment as determined by ARB 1085/2010-P (\$81,364,000) results in a Remaining Value of \$19,657,515 which when prorated for 9 months (blended) yields a Prorated Assessment of \$14,742,750.

The Board has been presented with two different methodologies for determining the Supplementary Assessed Value for the additional space determined to be occupied in 2010. The Respondent used a simplistic approach by assuming a 100% completed value and deducting the original assessment as determined by ARB 1085/2010-P or alternatively deducting the value of tenant improvements which are yet to be completed. The Complainant considered only the value of the additional spaces that had been finished and occupied. Both parties were cognizant of the 50% Value for these spaces which had already been captured in the Annual Assessment.

The Board finds the approach taken by the Respondent to be fundamentally flawed, in that it speculates on what the Assessed Value will be in future when it is 100% completed. The Board finding is supported by 2005 ABQB 512 (presented on C-1 page 59) wherein at paragraph 26 and 27 Madam Justice Acton wrote:

"[26] While in my view, the forgoing errors are sufficient to render the MGB's decision unreasonable, there are additional errors in the MGB's reasoning.

[27] For example, the second factual conclusion reached by the MGB reads: "Capital improvements are an assessable part of the real estate." I accept the Applicant's submission that this is only so once the improvements have been done and cannot operate on an anticipatory basis. Circumstances could easily have arisen in which the improvements might never have been done. In my view, it was unreasonable for the MGB to speculate about what might happen in the future, for example, renovating the premises, in order to determine value in the past."

The Board finds the approach taken by the Complainant more persuasive because it follows the Legislation precisely. Specifically, MGA 314 (3) requires "*A supplementary assessment must reflect*

- (a) *the value of an improvement that has not been previously assessed, or*
- (b) *the increase in the value since it was last assessed.*"

The Complainant utilized only 50% of the Net Market Rental Rate for the additional finished spaces to calculate the supplemental assessment because 50% had already been assessed as identified in ARB 1085/2010-P.

In addition, MGA 314 (4) requires "*Supplementary assessments must be prepared in the same manner as assessments are prepared under Division 1,*" The Complainant utilized the Income Approach To Value with the same factors for Vacancy, Operating Costs, Non Recoverables and Capitalization rates as the Annual Assessment. The Respondent did not challenge any of these factors.

Finally, MGA 314 (4) continues "*but must be prorated to reflect only the number of months during which the improvement is complete, occupied.....*" the Complainant utilized the occupancy permits issued by the City for each space, to determine the number of months during which the improvements were occupied. The Assessed Value for each space was prorated accordingly.

Board's Decision:

The 2010 Supplementary Assessment (Prorated) is reduced to \$8,890,000.

DATED AT THE CITY OF CALGARY THIS 03 DAY OF May 2010.


B. Horrocks
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.*