

**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:

Real Equity Centre Inc., *COMPLAINANT*

and

The City Of Calgary, RESPONDENT

before:

J. Noonan, *PRESIDING OFFICER*

R. Roy, *MEMBER*

D. Julien, *MEMBER*

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

ROLL NUMBER:	044053650
LOCATION ADDRESS:	1716 16 Av NW
HEARING NUMBER:	61153
ASSESSMENT:	\$3,540,000

This complaint was heard on the 16th and 17th days of June, 2011 at the office of the Assessment Review Board located at the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- G. Worsley, Sr. Tax Consultant, Altus Group

Appeared on behalf of the Respondent:

- M. Lau, Assessor, M. Jankovic, Policy Analyst, *The City of Calgary*

Property Description:

The subject is located at 1716 16 Av NW, Calgary. It is a lowrise "B" quality suburban office building constructed in 1973 in the Capitol Hill community. The property has 1544 sf of below grade office space assessed at an annual lease rate of \$8 per sf. and 24,415 sf of office space valued at an annual rate of \$14. The assessed value is \$3,540,000.

Jurisdictional or Procedural Issues Heard:

At the commencement of the hearing, the Assessor, Ms. Lau indicated that the Complainant's disclosure of evidence raised an issue not identified on the Complaint Form, namely that some 5000 sq.ft. of space in the subject originally leased to the Calgary Health Authority and now occupied by the Calgary Foothills Primary Care Network should be exempt from assessment. The "Additional Grounds for Appeal" attached to the Complaint Form are set out below in the "Issues" section. Ms. Lau asked that the Composite Assessment Review Board (CARB) not hear or consider this issue as it had not been properly identified on the Complaint Form. Further, Ms. Lau and Mr. Jankovic made application for costs to be awarded the City in recognition of the 8-10 hours spent by all involved in research, investigation, interpretation of legislation, and email correspondence with Alberta Health Services in preparation for the hearing. It was the City's position that this effort was required in the event that the CARB decided to hear the exempt space issue. Although the City's evidence package contained no documentary evidence resulting from the hours of preparation, Mr. Jankovic explained that their evidence in this matter would have been presented in testimony. Mr. Jankovic noted that his department, Customer and Governance Services, handled exemption requests made under s. 15 of the *Community Organization Property Tax Exemption Regulation (COPTER)* and also *Municipal Government Act* s. 362 although he conceded that under s 362 there was no absolute requirement for an exemption application and there was no certainty that the City's practice of requiring such an application would be upheld before all relevant decision-making authorities. The issue at question here appeared to relate to an exemption under s 362 (g) of the *MGA*. It had been determined through investigation that no property tax exemption request had been received by Customer and Governance Services in respect of the 5000 sq.ft. of the subject property. A similar situation had previously been dealt with by ARB 0841/2010-P where the same agent, Altus Group raised an exemption issue not identified on the Complaint Form, and the City asked that it be awarded \$500 in costs as detailed at Schedule 3 of *Matters Relating to Assessment Complaints Regulation 310/2009 (MRAC)*.

The Complainant's representative, Mr. Worsley, conceded that the property tax exemption issue

had not been properly raised as an issue on the Complaint Form, and withdrew the issue. The sanctions specified by MRAC dealt with new issues presented at a hearing, and as the issue had not actually been presented to the Board, Mr. Worsley felt that a cost award would be inappropriate. The cost application issue had not been previously raised by the City, and Mr. Worsley requested an opportunity to address the issue in written form and with the benefit of counsel.

Issue Relating to Preliminary Matters:

Should the Composite Assessment Review Board (CARB) award costs to the City for the time spent in preparing an assessment defense of a potential property tax exemption issue, that issue not raised on the complaint form, but part of the evidence disclosure?

Legislation:

Municipal Government Act

468.1 A composite assessment review board may, or in the circumstances set out in the regulations must, order that costs of and incidental to any hearing before it be paid by one or more of the parties in the amount specified in the regulations.

362(1) The following are exempt from taxation under this Division:

- (g.1) property used in connection with health region purposes and held by a health region under the *Regional Health Authorities Act* that receives financial assistance from the Crown under any Act;

Matters Relating to Assessment Complaints Regulation 310/2009 (MRAC)

9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

36(2) A one-member composite assessment review board may hear and decide one or more of the following matters:

- (a) a complaint about a matter shown on an assessment notice, other than an assessment;
- (b) a procedural matter, including, without limitation, the scheduling of a hearing, the granting or refusal of a postponement or adjournment, an expansion of time and an issue involving the disclosure of evidence;
- (c) an administrative matter, including, without limitation, an invalid complaint;

38 If a complaint is to be heard before a one-member composite assessment review board, the clerk must, after a copy of the complaint has been provided to the municipality, notify the municipality, the complainant and any assessed person other than the complainant who is affected by the complaint of the date, time and location of the hearing not less than 15 days before the date of the hearing is scheduled.

39(2) If a complaint is to be heard by a one-member composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 7 days before the hearing date,

- (i) disclose to the respondent and the one-member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
- (ii) provide to the respondent and the one-member composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;
- (b) the respondent must, at least 7 days before the hearing date,
 - (i) disclose to the complainant and the one-member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the complainant and the one-member composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence.

52(1) Any party to a hearing before a composite assessment review board or the Municipal Government Board may make an application to the composite assessment review board or the Municipal Government Board, as the case may be, at any time, but no later than 30 days after the conclusion of the hearing, for an award of costs in an amount set out in Schedule 3 that are directly and primarily related to matters contained in the complaint and the preparation of the party's submission.

(2) In deciding whether to grant an application for the award of costs, in whole or in part, the composite assessment review board or the Municipal Government Board may consider the following:

- (a) whether there was an abuse of the complaint process;
- (b) whether the party applying for costs incurred additional or unnecessary expenses as a result of an abuse of the complaint process.

(4) Any costs that the composite assessment review board or the Municipal Government Board award are those set out in Schedule 3.

Findings and Reasons:

Section 52(1) allows for a cost application at any time by either party. However, the regulation does not say that such application need be dealt with immediately, and in the interest of procedural fairness, the Complainant should have time to prepare a case as to why costs should not be awarded. Consequently, the CARB orders that the cost application by the City should be decided at a separate hearing, allowing the parties to refine their positions. The Board sees a cost application as an administrative matter similar to those listed at MRAC s 36 (2) (b). This allows for a 15 day notice of hearing, and simultaneous disclosure of evidence 7 days prior to the hearing. As the CARB wishes to address the cost application expediently and the facts surrounding the issue are fresh and few, the procedural rules that apply to a one-member CARB hearing will be applied as per MRAC ss 38 and 39(2). Although this application could be heard by a one member panel, the CARB expects that it will be heard by the same three members to whom the application was first made.

The CARB sees here two important matters: a cost application is not an extraordinary request, but neither is it a run-of-the-mill daily affair; and here, the application comes as a result of raising an issue of property tax exemption. In the view of this panel, this is considerably more important than an argument over assessed vacancy rates and the like. The legislation governing property tax exemption is specific and complex, and not to be trifled with. The consequence of achieving exempt status where such status is not deserved, brings into disrepute the entire scheme of property taxation. Such matters deserve consideration at a separate hearing.

Decision on Preliminary Matters:

The cost application will be heard at a separate hearing commencing 9.00AM, July 5, 2011 at the offices of the Assessment Review Board, Boardroom 5.

Issues:

The complaint form listed a number of issues or grounds for appeal, including that the assessment was in excess of market value, unfair and inequitable in comparison to similar properties, that property details are incorrect, that information requested under ss 299 and 300 of the MGA was not provided, the office classification is unfair, inequitable and incorrect, that the assessment does not reflect the condition of unfinished space, the rental rate should be no more than \$12, and the vacancy and credit allowances should be no less than 8%. At the hearing, the CARB heard evidence and argument on the following issues:

1. Should the subject's above grade office lease rate be reduced from \$14 to \$12?
2. Should the subject's vacancy rate be increased from 5.5% to 9.5%?

By making the changes to the rent and vacancy rates, the Complainant urged the CARB to reduce the assessment from \$3,540,000 to \$2,740,000.

Issue 1: Lease Rate

The Complainant provided a 15-lease study of B class NW properties from Dec 1, 2009 to Sept. 1, 2010 that covered spaces ranging from 800 sf to 3961 sf and concluded an average rent of \$12.30, a median of \$12 and a weighted average of \$11.87. Included in the study were 6 leases from the Campana Place building at 609 14 St. NW which has the benefit of underground parking, as does the Hillhurst Building at 301 14 St NW, from which another 6 leases originated. It was suggested that all the lease comparables were from buildings superior to the subject, and that the subject's lease rate should be no higher than \$12.

The Respondent presented 14 leases from the NW with commencement dates from July 1, 2009-2010, including 9 used by the Complainant. There were an additional 5 leases drawn from 609 and 301 14 St NW, four dating from July-October span and a January lease for 956 sf at \$18. While the Complainant had looked at nothing prior to December, this more complete picture justified the \$14 rate as the weighted average rent was \$14.89 and the median \$14.

Issue 2: Vacancy

The Complainant produced a NW vacancy study, the same 31 buildings as had been used by the City the previous year in their vacancy study. The conclusion was a 9.8% vacancy for "B" offices and 9% vacancy if one included 5 B or B+ medical buildings in the mix. The subject suffered 8274 sf of vacancy.

The Respondent took the Complainant's 31 NW buildings, compared the ARFI vacancy data with what Altus presented, did further checking and showed vacant areas by building as of July 1, 2010. There were revisions to vacant space, up and down, where called for as well as the results for an additional 25 buildings in the quadrant, all of B, B-, or B+ quality. The result was a mean vacancy rate of 6% and a weighted mean of 5.4%. The assessed 5.5% vacancy was within range of 4.9%-7.5% as supported four third-party market reports.

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

The Complainant tried to show a declining lease rate in the market as the year progressed, and indeed, if one confined the study period to the Dec '09 – July '10 period, the conclusion is lower than the July-July numbers. Most of the leases come from 2 properties on 14 Street, and they display a wide range of rates, from \$11 to \$19. As illustration, 2 very similar spaces, 845 and 800 sf from the same lowrise building rented in March and July, 2010 for \$12 and \$15. A slightly larger 956 sf area commanded \$18 in the other building in January, 2010. The CARB is not convinced that the \$12 rate advocated by the Complainant is a representative market rate or can be better explained by the influence of a number of leases of less desirable space. As shown above, there are unexplained factors at play that value ostensibly similar spaces at a huge variance. The CARB accepts the \$14 typical lease rate as determined by the Respondent.

The CARB also found the more exhaustive vacancy study conducted by the Respondent showing an average 6% vacancy rate better supports the 5.5% assessment allowance than the 9.5% requested by the Complainant.

Board Decisions on the Issues:

The Board confirms the assessment of \$3,540,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF July 2011.


for J. Noonan
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.*