

**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, Revised Statutes of Alberta 2000 [the Act].

between:

***Dundee Canada (GP) Inc.***  
***(as represented by Altus Group Limited), COMPLAINANT***

and

***The City of Calgary, RESPONDENT***

before:

***J. Dawson, PRESIDING OFFICER***  
***B. Kodak, MEMBER***  
***M. Bruton, MEMBER***

This is a complaint to the Calgary Composite Assessment Review Board [CARB] in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>068052208</b>
<b>LOCATION ADDRESS:</b>	<b>435 4 Avenue SW</b>
<b>LEGAL DESCRIPTION:</b>	<b>Plan C; Block 26; Lots 1-6</b>
<b>HEARING NUMBER:</b>	<b>67915</b>
<b>ASSESSMENT:</b>	<b>\$ 24,610,000</b>

- [1] This complaint was heard on the 26<sup>th</sup> day of July, 2012 at the office of the Assessment Review Board [ARB] located at Floor Number 4, 1212 31 Avenue NE, Calgary, Alberta, Boardroom 2.
- [2] Appeared on behalf of the Complainant:
  - S. Meiklejohn      Director, Altus Group Limited
- [3] Appeared on behalf of the Respondent:
  - R. Fegan              Assessor, City of Calgary

### **SECTION A: Preliminary, Procedural or Jurisdictional Issues:**

- [4] The complaint form, disclosure document and rebuttal document contain extensive argument pertaining to improper disclosure contrary to requirements under sections 299 and 300 of the Act. At the beginning of the hearing the Complaint informed the Board that they are not proceeding with merit on that allegation.
- [5] No procedural or jurisdictional matters were raised.

### **SECTION B: Issues of Merit**

#### **Property Description:**

- [6] Constructed in 1977, the subject – 435 4 Avenue SW, is located downtown along 4th Avenue at the corner of 4th Street SW in the DT 1 submarket zone. There is one seven storey high-rise office building with 89,132 square feet and 83 underground parking stalls. The site has an area of 18,743 square feet.
- [7] The Respondent prepared the assessment showing 79,875 square feet of office space graded as a 'B' quality, 9,256 square feet of retail space, and 83 underground parking stalls to arrive at an assessed value of \$24,610,000.

#### **Issues:**

- [8] The Complainant identified two matters on the complaint form:
  - #3.              *an assessment amount*
  - #4.              *an assessment class*
- [9] Following the hearing, the Board met and discerned that these are the relevant questions that need to be answered within this decision:
  - 1. *What quality grade best describes the subject?*
  - 2. *What is the correct typical rental rate for the subject?*
  - 3. *What is the correct typical vacancy for the subject?*
  - 4. *What is the correct capitalization rate for the subject?*

**Complainant's Requested Value:**

- \$16,220,000 on complaint form
- \$15,260,000 in disclosure document
- \$15,260,000 at hearing confirmed as the request

**Board's Decision in Respect of Each Matter or Issue:*****Matter #3 - an assessment amount*****Question 1 What quality grade best describes the subject?**

- [10] The Complainant asserted that the assessment does not correctly reflect the character and physical condition of the subject. (C1 p. 11) The assessor has deemed the subject as 'B' quality; however, based on comparable properties the Complainant asserts that the subject is better graded as a 'B-'.
- [11] The Complainant reviewed a document created by the Respondent (C1 pp. 22-27); *"Assessment Range of Key Factors, Components and Variables – 2012 Office"* (Office FCV). Within this document it shows that office buildings in Calgary are compared by location, class, and space type and area. For the purposes of this decision the Board focused their attention on the criterion related to class and quality.
- [12] The Board finds the Office FCV criteria used by the Respondent does not clearly describe the attributes to differentiate between the different possible grades.
- [13] The Board found that when the Respondent refers to the term class, they are referring to the grade for which office buildings are classified. Using the term class does cause some confusion because the Act defines class for assessment purposes in a completely different manner as found in section 297(1); *"When preparing an assessment of property, the assessor must assign one or more of the following assessment **classes** to the property: (a) **class 1** residential; (b) **class 2** non residential; (c) **class 3** farm land; (d) **class 4** machinery and equipment."* As a result the Complainant has listed class as a matter under complaint; however, their real concern is with the grading of the space which is a different matter.
- [14] The Respondent's 'class' structure (C1 p. 22) is described as three major groups and 11 classes: AA, A+, A, A-, B+, B, B-, C+, C, C-, and D. The criteria for range includes: location within a market area, age, condition, building functionality, number of floors, total rentable area, floor plate, type and quality of constructions, parking availability and capacity, quantity of retail space, tenant amenities, and rent generating capacity.
- [15] Further into the document (C1 pp. 23-24), the Respondent indicates:
- [16] *"For the purposes of comparison, the Respondent, generally groups office space into four major grades: AA, A, B, and C, these grades are referred to as classes and may include sub-classes to differentiate quality differences with the specific grade.*
- Class AA:** *Most prestigious buildings competing for premiere office users with rents well above average for the area. Buildings, typically, have high*

quality standard finishes, state of the art systems, exceptional accessibility and a definite market presence.

**Class A:** Buildings competing for above average office users with rents above average for the area. Buildings, typically, have high quality standard finishes, exceptional accessibility and do not compete with Class AA at the same rental rate.

**Class B:** Buildings competing for a wide range of users with rents in the average range for the area. Buildings finishes, typically, are fair to good for the area and systems are adequate, but the building does not compete with Class A at the same rental level.

**Class C:** Buildings competing for tenants requiring functional space at rents below the average for the area.

- [17] *In addition to the above classes, there are some buildings that would be classified below Class C. These buildings suffer from functional and location issues and as a result typically receives rents below the average for the area."*
- [18] The Complainant led the Board through dozens of pages of information and calculations to show how the subject value has changed since the most recent sale of the subject in 2007 and how these calculations proved the current value matches to a 'B-' grading for assessment purposes. In addition the sale of the subject was influenced by a Real Estate Income Trust (REIT) calculation of enterprise value rather than actual market value. As the Board understands the difference, enterprise value is calculated as market cap., plus debt, minority interest and preferred shares, minus total cash and cash equivalents. Another factor which makes the sale difficult to rely on was the multijurisdictional component of a portfolio sale. Regardless of the aforementioned, assuming the sale was at market with today's typical income, the Complainant calculates a value of \$175 per square foot versus the assessment of \$276 per square foot.
- [19] The Respondent disputed the Complainant's evidence indicating that, just because a sale is to a REIT doesn't make it non-market.
- [20] The Respondent spoke on the quality standards found in Matters Relating to Assessment and Taxation (MRAT) regulation where a connection is made to the Ministers Quality Guidelines. Furthermore, assessments must follow typical market conditions.
- [21] The Respondent disputed the calculations in the Complainant's evidence indicating rents within the subject support the assessment, also asserting that the Complainant used some favourable *post facto* evidence while ignoring less favourable *post facto* evidence.
- [22] The Respondent requested that all testimony including questions, answers and evidence for hearing number 67886 be brought forward to this hearing. The Complainant agreed.
- [23] **The Board reviewed the evidence and finds the subject is more comparable in all aspects to quality grade 'B-' properties and therefore makes a change to the quality grading to a 'B-'.**

**Question 2 What is the correct typical rental rate for the subject?**

- [24] The Complainant requested (C1 p. 60) a change in the typical office rental rate from \$19 per square foot to \$14 per square foot. In addition the Complainant requested a change in the typical retail rental rate from \$16 per square foot to \$14 per square foot.
- [25] The Complainant provided evidence on downtown office rental rates within a chart labelled 'Downtown Office Leases – Quality – B – DT1' (C1 p. 71). The chart shows fourteen leases ranging from \$10 per square foot to \$17 per square foot. The lease comparables calculate a mean of \$14.77, and a median of \$16.
- [26] The Respondent noted errors contained in the Complainant's chart; 1) four leases are considered *post facto*, and 2) several 'B' class buildings which are represented by the Complainant have not been included within the analysis.
- [27] The Complainant responded that buildings were omitted because they are superior, while the *post facto* were provided to substantiate the trend.
- [28] The Respondent provided a rental rate analysis for grade 'B' buildings (R1 p. 11). Within this study labelled '2012 Downtown Office B Rent Equity Comparables' we find 40 lease comparables. The leases span terms of 1 year to 10 years, encompass space of 990 square feet to 10,280 square feet, and include submarket DT1 only.
- [29] The Complainant, through questioning, established the chart includes leases from one building that make up more than 25% of the study. This one building, located at 520 – 5 Ave SW, achieves rents more comparable to an 'A' graded building and distorts the values within the chart.
- [30] The analysis as presented arrives at a mean of \$19.57, a median of \$20.00 and a weighted mean of \$20.98.
- [31] Removing the disputed 11 leases maintained a sample of 29 lease comparables and was suggested by the Complainant to bring down the mean, median and weighted mean. However, no evidence was supplied to support that suggestion.
- [32] The Responded provided no evidence to support the 'B-' rental rate. However, as seen within the '2012 Downtown Office Net Rent Rates' provided by the Respondent (R1 p. 10), the typical rental rate for office space in DT1 with a 'B-' grading is \$15.
- [33] The Board changed the quality grading to a 'B-' in the pages preceding. Therefore, the question remaining is whether typical office rental rate should be altered again to \$14 and whether the retail space should be altered to \$14.
- [34] The only evidence from the Complainant in support of the requested change to the typical retail rental rate was an actual rental role as of January 1, 2012 (C1 pp.61-66). The rent roll indicates six retail spaces; 1) one vacant at 3,635 square feet, 2) tenant occupying 1,731 square feet at an actual rental rate of \$13.36 per square foot – not signed during valuation year, 3) tenant occupying 6,835 square feet at an actual rental rate of \$10 per square foot – not signed during valuation year, 4) tenant occupying 3,513 square feet at an actual rental rate of \$13.00 per square foot – not signed during valuation year, 5) tenant occupying 690 square feet at an actual rental rate of \$25.00 per square foot – not

signed during valuation year, and 6) tenant occupying 688 square feet at an actual rental rate of \$17.00 per square foot – not signed during valuation year.

- [35] **The Board reviewed the evidence and finds the typical office rental rate is adjusted by the grading decision in question 1. The Board finds the evidence provided by the Complainant supports an additional change to the typical retail rental rates to \$15.**

**Question 3 What is the correct typical vacancy for the subject?**

- [36] The Complainant requested (C1 p. 60) a change in the typical vacancy for all space allocations to 10%. The assessed typical vacancy differs for each space type as follows; 1) office space – 8%, 2) retail spaces – 8%, and 3) parking stalls – 2%.
- [37] The Board changed the quality grading to a 'B-' in the pages preceding. As seen within the '2012 Downtown Office Net Rent Rates' provided by the Complainant (C1 p. 30), the typical vacancy rates with a 'B-' grading are 8% for office space and 2% for parking stalls.
- [38] The Complainant provided historical vacancy information from CresaPartners (C1 p. 88). This vacancy information is for the entire downtown with no submarket breakout and for grades 'AA', 'A', 'B', and 'C'. There is no breakdown of data for 'B-'. This analysis indicates a five year average for grade 'B' of 10.00% and 10.06% for 2011 specifically, which is down significantly from 2009 and 2010 figures at 16.29% and 16.58% respectively.
- [39] The Complainant provided a rental roll dated January 1, 2012 (C1 pp. 62-66) showing 17,092 square feet of retail space (compared to 9,256 square feet assessed). The vacancy for the retail space is 21.3%. The vacancy in the office space is 1,895 square feet or 2.6%. No data for the parking stalls was provided. The overall vacancy stands at 6.23%.
- [40] The Respondent provided an analysis (R1 p. 18); '2012 Downtown Office Vacancy' to show the Board that DT1 and DT8 have a typical vacancy of 5.04% for 'B' and 7.39% for 'B-'. The Respondent though provided the 'B-' grade a vacancy allowance of 8%.
- [41] **The Board found the evidence on vacancy provided by the Respondent to be reliable and awarded the Complainant 8% vacancy allowance on the office portion in recognition of the grading change to 'B-'.**

**Question 4 What is the correct capitalization rate for the subject?**

- [42] The Complainant requested (C1 p. 60) a change in the capitalization rate (cap. rate) from the assessed 7.5% to 8.5%.
- [43] The Complainant provided a table (C1 p. 142) to illustrate cap. rates between third party reports and Respondent sales. The chart shows sales reported in 2007 and 2008 with RealNet calculated cap. rate ('going-in' cap. rate – using actual revenues reported) versus the Respondent's calculated cap. rate (typical cap. rate – using typical revenues). The variance depending on class and year ranged from +0.66% to -2.33% for actual sales. Other third party reports from Altus InSite, Colliers and CBRE report cap. rates based on a survey of industry insiders and their opinion of what the cap. rate is. Due to a lack of sales,

the cap. rate data for 2009, 2010 and 2011 is based solely on the opinions of industry insiders.

- [44] The Respondent provided little information regarding cap. rate. The primary evidence was a chart labelled '2012 Downtown Office Capitalization Rate', wherein class 'B' buildings are all assigned a cap. rate of 7.5%. The testimony from the Respondent is that they relied heavily on third party reports for 2011 cap. rate because there have been no sales to analyse.
- [45] The Board reviewed all the evidence and testimony before it and determined that there is a distinct difference between 'going-in' cap. rate and typical cap. rate. The cap. rate reported in third party reports are opinions of what a 'going-in' cap. rate would be if a purchase were to occur. These 'going-in' cap. rates are used by investors when making investments and are not relevant for assessment purposes.
- [46] **The Board found the Respondent relied heavily on investor opinion of current cap. rates and did not factor in the typical variance between 'going-in' cap. rate and typical cap. rate. The Board adjusts the typical cap. rate for the subject to 8.0% to recognize the historical gap in cap. rates and, in the case of 2011, match the average of the third party reported cap. rate.**
- [47] **The Board calculated the assessment using the preceding decisions and correcting the space allocations as per the rental roll.**

#### Potential Net Income

#	Sub Component	Area (Square Feet)	Quantity	Rental Rate	Total Market Rent
1	Parking Stalls		83	\$4,800.00	\$398,400
2	Retail Space	17,092		\$15.00	\$256,380
3	Office Space	71,644		\$15.00	\$1,074,660
	Total	88,736		Potential Net Income	\$1,729,440

#### Values Influencing Income

#	Sub Component	Vacancy Rate	Operating Costs	Non Recoverable
1	Parking Stalls	2.0%	\$0.00	2.0%
2	Retail Space	8.0%	\$20.00	2.0%
3	Office Space	8.0%	\$17.00	2.0%

#### Effective Net Income

#	Potential Net Income		\$1,712,348
1	Less Vacancy (Parking Stalls)	2.0%	(\$7,968)
2	Less Vacancy (Retail Space)	8.0%	(\$20,510)
3	Less Vacancy (Office Space)	8.0%	(\$85,973)
	Total Effective Net Rent		\$1,614,989

#### Net Operating Income

Vacant Space Shortfall	(\$124,783)
Non Recoverable	(\$32,300)
Net Operating Income	\$1,457,906

#### Market Value

Net Operating Income	\$1,457,906
Capitalization Rate	8.0%
Truncated Assessed Value	\$18,220,000

[48] No additional evidence was presented by either party.


**Matter #4 - an assessment class**

[49] The Board did not hear any evidence requesting a change in an assessment class from its current non-residential designation.

**Board's Decision:**

[50] After considering all the evidence and argument before the Board it is determined that the subject assessment is changed to a value of \$18,220,000; which is fair and equitable.

DATED AT THE CITY OF CALGARY THIS 17 DAY OF September 2012.

  
J. Dawson  
Presiding Officer



**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1.	C1 Complainant Disclosure – 232 pages (pages 1-52 and 55-234)
2.	C2 Complainant Disclosure Appendix – 101 pages
3.	R1 Respondent Disclosure – 85 pages
4.	C3 Rebuttal Disclosure – 357 pages

*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.*

<b>Municipal Government Board use only: Decision Identifier Codes</b>				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Low Rise	Income Approach	Market Rent
				Vacancy
				Capitalization Rate