

**CALGARY  
COMPOSITE 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:

***Westpen Properties Ltd. (as represented by Altus Group Limited), COMPLAINANT***

and

***The City Of Calgary, RESPONDENT***

before:

***S. Barry, PRESIDING OFFICER***

***J. Mathias, MEMBER***

***P. McKenna, 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:

**ROLL NUMBER:** 031023401

**LOCATION ADDRESS:** 2728 Hopewell Pl. NE

**HEARING NUMBER:** 68488

**ASSESSMENT:** \$24,720,000

This complaint was heard on the 31st day of July, 2012 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:

- *D. Chabot, Altus Group Limited*

Appeared on behalf of the Respondent:

- *C. Neal, City of Calgary*
- *C. MacMillan, City of Calgary (observer)*

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

[1] Roll numbers 031023500 (1336/2012-P), 0310223401 (1335/2012-P), the subject of this hearing, and 024023905 (1334-2012-P) were all subject to requests by the Complainant that certain information be excluded from the Respondent's disclosure document (R1) pursuant to s. 9(4) of *Matters Relating to Assessment Complaints Regulation*, AR 310/2009 (MRAC). Decision 1336/2012-P was the first complaint heard and the parties requested that all relevant information, evidence, questions and responses be carried forward from that decision to the subsequent decisions. Accordingly, this decision contains only new or additional argument or evidence specific to the Complaint at hand.

**Issue 1:**

[2] Should the Board accept as evidence from the Respondent, a letter dated July 23, 2012 from the Minister of Municipal Affairs responding to a Compliance Review request by Altus Group Limited?

[3] The Respondent requested that the referenced letter, addressed to Altus Group Limited, be considered by the Board, outside of the normal disclosure requirements, because it speaks to the City's compliance with ss. 299/300 of the Act. The Respondent agreed that the letter is not specific to the Complaint being heard but that it does reference two other suburban office/warehouse properties.

[4] The Complainant objected to the request because she had not had sufficient time to review the letter and determine what specific requests were at issue for the cited files. Further, the Complainant noted that the roll numbers referenced in the letter were not before this Board for decision.

**Decision and Reasons with Respect to Issue 1:**

[5] The Board marked the letter R2 for identification purposes but, upon review, determined that it referenced specific roll numbers that were not before the Board and did not include the two remaining roll numbers that are before it at these hearings. Accordingly, the Board determined that the letter was not relevant to the file(s) under complaint and it was not considered or given weight in the determination of Issue 2, below. The Board's decision was provided orally at the hearing in substantially the content written here.

**Issue 2:**

[6] Should pages 27 through 39 of the Respondent's disclosure R1 be excluded under s. 9(4) of MRAC?

[7] The Complainant requested that pages 27 through 39 of the Respondent's disclosure R1 be excluded from the Board's consideration since they relate to a Vacancy Rate Study (the Study) for suburban office/warehouses that was requested by Altus Group Limited (Altus) pursuant to ss. 299/300 of the Act which was not provided by the Respondent. The Complainant noted that, with respect to the timelines and actions contained in paragraph [3] of 1336/2012-P, the Complainant did not participate in a Customer Review meeting in February (item 1) and therefore no letter was issued by the Respondent (item 2). Additionally, the Complainant noted that, with respect to item 8 in para [3] of 1336/2012-P, the Respondent did provide the requested Study on June 21, 2012 although the information in the study is somewhat different from what is shown in R1, p.28.

[8] The Respondent noted that the only difference in the two charts (C2 p.86, June 21 and R1, p.28) was an amendment to 100 per cent vacancy from 0 per cent vacancy for one property at 1107 53 Av NE that was identified by the Complainant in her disclosure, C1. The Respondent adjusted the Study to reflect that information. The amendment potentially benefited the Complainant by marginally increasing the vacancy rate. Additionally, the Assessment Request for Information (ARFI) on pages 30 through 39 of R1, and received from the property manager for 5735 7 St. NE, was not requested by the Complainant although it was one of the properties identified by her as having 50 per cent vacancy. The ARFI was included in R1 to address the Complainant's argument in C1 of additional vacancy in the property type.

[9] The Respondent also requested that the Board give further consideration to the words "see or receive sufficient information" in ss. 299/300 in light of the Respondent's June 21, 2012 written offer to have the Complainant attend its offices to see the requested data.

**Decision with Respect to Issue 2:**

[10] The Board denied the Complainant's request pursuant to s. 9(4) of MRAC and did not require the exclusion of any portions of document R1 or of the Complainant's Rebuttal, C2.

**Reasons:**

[11] The Board considered the evidence and argument that was before it in CARB 1336/2012-P with respect to ss. 299/300 disclosure and in the context of the evidence that was before it at that hearing.

[12] From the information in the disclosure documents at this hearing, the Complainant had already identified almost half of the properties listed in the Study prior to submitting her C1 disclosure document and was able to influence a change in that Study by identifying a previously un-recognized vacancy that had not been included in the Study. The additional properties were made known to the Complainant three days after her initial disclosure had been submitted on June 18. The Complainant made use of those additional properties and their associated vacancies in her C2 Rebuttal and, indeed, without them would not have been able to develop her argument for the geographical stratification of suburban office/warehouses in the

merits portion of the Complaint. The disputed ARFI information was a direct response to the Complainant's assertion of additional vacancy in that property.

[13] Page 27 in R1 is a cover page containing no data or argument. Page 29 in R1 is a portion of the City's disclaimer with respect to the Study.

[14] The Board decided that the Respondent's failure to provide the requested study within the required time did not disadvantage the Complainant and therefore no portion of either the Respondent's or the Complainant's submissions was excluded from the Board's consideration of the merits of the Complaint.

### **Property Description:**

[15] The property under complaint is located in the NE quadrant of the City within the Horizon district, an area of mixed suburban office and industrial properties. It is located at 2728 Hopewell Pl. NE, south of McKnight Blvd. and east of Barlow Trail. It is a single-tenanted, suburban office/warehouse building, constructed in 2000, containing 128,554 square feet (sq.ft.) of office/warehouse space. Its land use district is Industrial-Business and it is assessed using the Income Approach to value using a 1 per cent vacancy rate.

### **Issues:**

[16] A number of issues were raised on the Complaint Form. At the hearing, these were reduced to the following:

1. Is the subject property vacant for assessment purposes?
2. Should the premises at 5735 7 St. NE be considered 50 per cent vacant for assessment purposes and for the purposes of the vacancy study?
3. Should the suburban office/warehouse property type be further stratified by geographical quadrant to better reflect market value differences for assessment purposes?
4. Should the vacancy rate be increased for NE quadrant properties to 4.5 per cent to better represent the market value on July 1, 2011?

### **Complainant's Requested Value:**

[17] \$23,070,000 based on a vacancy rate of 4.5 per cent.

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

#### **Issue 1: Is the Subject Property Vacant for Assessment Purposes?**

[18] The subject property is an unoccupied, suburban office/warehouse, leased and previously occupied by General Electric (the tenant). The lease commenced October 1, 2000 and terminated September 30, 2015. At some point, the tenant vacated the premises but the exact date was not provided by the Complainant. The tenant continued, and continues, to pay rent, be responsible for the lease and is actively pursuing subtenants. The Respondent

provided an ARFI, signed by the property manager on August 19, 2011, after the valuation date of July 1, 2011, indicating that there was no vacancy within the premises.

#### **Decision and Reasons with Respect to Issue 1:**

[19] This is a fact-based argument. The Complainant cannot provide a date on which the premises were vacated by the tenant. The Respondent has provided evidence that the premises were still occupied by the tenant on the valuation date. The Board determined that the property was not vacant for assessment purposes.

#### **Issue 2: Should the premises at 5735 7 St. NE be considered 50 per cent vacant for assessment purposes and for the purposes of the vacancy study?**

[20] In arguing the accuracy of the Respondent's Vacancy Rate Study (the Study), the Complainant provided, in her disclosure document C1, a rent roll dated July 1, 2010 for 5735 7 St. SE that indicated that the lease on two units would expire on June 30, 2011. A subsequent rent roll for the property dated December 1, 2011, after the July 1, 2011 valuation date, showed that 20,063 sq.ft. or 51.99 per cent of the total premises, attributable to the noted tenants, was vacant although there was no indication of when the vacancy occurred. The Respondent provided an ARFI for the disputed premises, signed by the property manager and dated August 25, 2011, after the valuation date of July 1, 2011 that demonstrated that the premises were still occupied by the tenants who had been the subject of the lease, albeit on a month to month basis. A change in the annual operating costs had been penned in to the report.

#### **Decision and Reasons with Respect to Issue 2:**

[21] Again, this is a fact-based argument. While the December 2011 rent roll shows that the property was vacant at that time, the owner's representative declared that the space was occupied as of the valuation date. Therefore, the Board determined that the premises were not vacant in whole or in part for assessment purposes and that there is no error, in that regard, in the Study.

#### **Issue 3: Should the suburban office/warehouse property type be further stratified by geographical quadrant to better reflect market value differences for assessment purposes?**

[22] The Complainant argued that the Respondent stratifies suburban offices by geographical quadrant with respect to vacancy rates and provided support for that position through the City's office vacancy studies and pointed to previous CARB decisions as support for the stratification for suburban offices. The Complainant argued that the market place operates differently in the NE than the other quadrants, most specifically the SE, but did not demonstrate that difference with respect to suburban office/warehouse space other than by actual vacancies.

[23] The Complainant provided two charts showing the vacancy rates for suburban office/warehouse in the NE and one for vacancy rates in the SE. The properties are co-incident to those in the Respondent's Study with three exceptions: the Complainant omitted the two SW office/warehouses as well as one NE office/warehouse at 1243 48 Av NE. The Complainant included at least two properties in the chart for the SE that the Respondent noted belonged in the NE and treated the disputed 5735 7 St. NE property as 50 per cent vacant. The charts, as presented, contend that there is 0 per cent vacancy in the SE and 4.68 per cent

vacancy in the NE. The vacancy in the SW is not accounted for. On the basis of the two charts, the Complainant requested that a vacancy rate of 4.5 per cent be applied to the assessment valuation as being applicable to NE office/warehouses.

[24] The Respondent's position was that, unlike suburban office/warehouses, there are significantly more suburban offices than office/warehouses in the City and that there is sufficient dispersion of those office properties to the four quadrants to justify a geographic stratification. The Respondent noted that the 34 office/warehouse properties contained in the Study represent the entirety of that sub-class in the City of Calgary and that relatively small number does not justify an additional stratification.

**Decision and Reasons with Respect to Issue 3:**

[25] It is clear from the documentation provided by the Complainant in C2 that the City does indeed stratify certain properties geographically. However, it is also clear that the assignment of properties for geographical purposes does not appear to occur with such a limited sample size as the subject class. Referencing only suburban office versus suburban office/warehouse, the Board cannot rationalize a further stratification based on location. The Board gave no weight to the Complainant's argument that a specific vacancy rate should be applied to NE properties as a stand-alone district.

**Issue 4:** Should the vacancy rate be increased for NE quadrant properties to 4.5 per cent to better represent the market value on July 1, 2011?

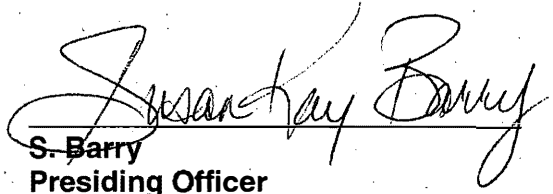
[26] The Complainant did not make its case that either the subject property was vacant or that the property at 5735 7 St. NE was partly vacant on the valuation date. The Complainant was unable to raise any convincing argument for why there should be a further stratification of this property sub-class based on location. The Complainant's charts on p.161 of C2 contained errors as to the locational assignment of two properties and omitted one NE property altogether. The conclusions drawn from that page are therefore in question.

[27] The Board determined that there was no basis in fact to warrant an amendment to the assessed vacancy rate.

**Board's Decision:**

The 2012 Assessment is confirmed at \$24,720,000

DATED AT THE CITY OF CALGARY THIS 29<sup>th</sup> DAY OF August 2012.

  
S. Barry  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Disclosure
2. R1	Respondent's Disclosure
3. C2	Complainant's Rebuttal
4. R2	Letter dated July 23, 2012 (received but not considered as part of the evidence)

*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.*

## For MGB Administrative Use Only

Decision No.: 1335/2012-P		Roll No.: 031023401		
Subject	Property Type	Ppty Sub-type	Issue	Sub-Issue
CARB	Jurisdictional/Prelim	Info Exch	s. 9(4)	s. 299/300 Act
	Office	Suburb Ofc/Ware	Vacancy Rate	stratification