

**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:

845501 Alberta Ltd. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***C. J. Griffin, PRESIDING OFFICER
J. Massey, MEMBER
J. Kerrison, MEMBER***

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

ROLL NUMBER: 068049097

LOCATION ADDRESS: 125 – 4th Avenue SW

HEARING NUMBER: 62970

ASSESSMENT: \$414,830,000.

This complaint was heard on 18 day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *G. Worsley*
- *D. Genereux*

Appeared on behalf of the Respondent:

- *H. Neumann*
- *R. Fegan*

Property Description:

The subject property is a "AA" Class office building that is located within the downtown core area of Calgary. The property, which was originally constructed in 2001, is 35 floors in height and contains approximately 931,185 Sq. Ft. of which 17,718 Sq. Ft. is retail in nature and 670 Sq. ft. is classified as storage area. The building has 560 underground parking stalls. The entire building, including the retail area and the parking area is head leased to TransCanada Pipelines Limited who then sublease the retail areas. The building is connected to the city's +15 walk-way system.

Issues:

While a number of inter-related issues were outlined on the Assessment Review Board Complaint form, at the Hearing and in their submission the Complainant reduced these to:

- 1) The assessed rental rate of \$30/Sq. Ft. is too high and should be \$27/Sq. Ft.
- 2) The assessed parking rate of \$525 per stall per month is excessive and should be \$475/stall/month.

Complainant's Requested Value: \$373,420,000 (revised at the Hearing)

Complainant's Position

The Complainant contends that the assessed rental rate of \$30/Sq. Ft. is excessive as the property is subject to a lease which stipulates a rate of \$25/Sq. Ft. until the year 2021. Additionally, the Complainant maintains that 3rd party publications report rental rates in the downtown core have declined by as much as 40% from the highs of late 2007 and early 2008. In support of their argument for a lower assessed lease rate, the Complainant produced (Exhibit C-1 pg 31) a summary of 11 leases negotiated and commencing between July 2009 and July 2010. All of the leases pertain to "AA Class office buildings in downtown Calgary. The areas involved ranged from approximately 1,626 Sq. Ft. to 160,853 Sq. Ft. Six of the referenced leases relate to leased areas greater than 10,000 Sq. Ft. The weighted mean of these lease rates is \$27/Sq. Ft. and the weighted mean of the leases for greater than 10,000 Sq. ft. is \$26.67/Sq. Ft. In presenting this information the Complainant maintains that *"Valid rental rate comparisons should be restricted to new lease deals which could include lease renewals if the renewal was based on landlord and tenant agreeing to current market rental terms, and any rent clause about 'no less than current rent' did not come into force."* The Complainant also pointed out to the CARB their concern over the use of 'construction leases' for comparison purposes. Developer construction leases are done with the cost of construction and a return on investment for the developer in mind. Such leases, the Complainant maintains, are high and not valid for estimating typical market rent. In their evidence the Complainant stressed that only buildings with second generation leases have been considered.

Insofar as the parking rate is concerned, the Complainant referred the CARB to the Assessment Request For Information (ARFI) form for the subject building which, as shown on page 88 of Exhibit C-1, shows the parking revenue to be 485 unreserved stalls at \$247.64/month and 75 reserved stalls at \$297.64/month. Additionally, on page 86 of Exhibit C-1, the Complainant shows a copy of the building Income Statement for the calendar year 2008 which shows the total parking revenue to be \$1,920,822.40 which equates to approximately \$285/stall/month. The Complainant also presented (Exhibit C-1 pg 93) a 2010 parking rate survey for Class "AA"

buildings, completed by *CresaPartners*, which shows reserved stalls averaging \$565/month and unreserved stalls averaging \$499/month. This same survey reports the subject building as having a reserved stall rate of \$480/month and an unreserved rate of \$425/month. Copies of a similar survey for the years 2009, 2008 and 2007 are found on pages 94 through 97 of Exhibit C-1 and all show the rates for the subject building to be consistent at the aforementioned rates of \$480/month for the reserved stalls and \$425/month for the non-reserved stalls since 2007 when the reported rates were \$440/month and \$375/month respectively. The Complainant maintains that the location of the subject property is inferior to many of the competing "AA Class buildings and that is why the building is unable to generate the assessed parking rates.

Application of the requested rental rate together with the requested parking rate reduction results in a requested assessment of \$373,420,000.

Respondent's Position

In defence of the assessed value the Respondent submitted their Exhibit R-1 which, on page 33, shows the *City of Calgary 2011 Downtown Office AA Class Rental Rate Analysis* which refers to 16 leases all of which have start dates on or before July 1/2010. The lease information pertains to six (6) Class "AA" buildings with six (6) of the leases being in the Ernst & Young Tower, one (1) lease in Bankers Hall, three (3) leases in Centennial Place East, one (1) lease in Petro-Canada, four (4) leases in Jamieson Place and one (1) lease in Penn West Plaza. The leases relate to areas ranging from 5,727 Sq. ft. to 389,779 Sq. ft. and the rates range from \$20/Sq. ft. to \$36.50/Sq. Ft. and indicate a mean of \$30.84/Sq. Ft., a median of \$32/Sq. Ft. and a weighted mean of \$32.45/Sq. Ft. The weighted mean for leases of greater than 10,000 Sq. Ft. is reported at \$32.51/Sq. Ft. The Respondent acknowledged that they had not included the Bennett Jones lease (Banker's Hall) as they deemed same to be a renewal; however, had that lease also been included in their study it would only have had a minor and insignificant impact upon the conclusions of that study.

In support of the applied parking rates, the Respondent referred the CARB to page 48 of their Exhibit R-1 which shows the Class AA Parking rates for 2010. This is the same data that was referred to by the Complainant in their submission. This survey reports reserved stalls averaging \$565/month and unreserved stalls averaging \$499/month and the Respondent pointed out that this equates to an overall average of approximately \$532/stall per month. The Respondent refutes the argument of the Complainant that the location of the subject building is inferior to many of the others and is thus not capable of generating the applied rate of \$525/stall per month.

Complainant's Rebuttal

The Complainant presented a Rebuttal argument and supported same with their Exhibit C-2. This Rebuttal dealt with a number of issues. Firstly the sale of an interest in Banker's Hall (referred to in Exhibit R-1 pg. 51) was confirmed as being an non arms-length transaction between related parties. This confirmation is presented in the form of a letter from the Senior Vice President of one of the companies involved. (The Respondent did acknowledge that the transaction was noted as being non arms-length when they referred to same in their presentation). The Complainant maintains that the Bennett Jones lease in Banker's Hall was a new lease and not a renewal. In support of this contention the Complainant referred the CARB to page 15 of Exhibit C-2 which shows a copy of a document entitled Lease Renewal, Expansion and Amending Agreement which, on page 17 of Exhibit C-2 states "...and the rent

payable for the Leased Premises during the renewal Period which shall be subject to negotiation based upon the effective market rent prevailing at June 1, 2010 for similar space in buildings of similar age and quality located in the central downtown business district of the City of Calgary which is available to new tenants of such buildings entering into a lease for a five (5) year term but, in any event, such rate shall not be less than twenty-four dollars and twenty-five cents (\$24.25) per square foot of rentable area per annum."

The Complainant also contends that the Assessor's lease rate study (Exhibit R-1 pg 33) is inaccurate as many of the leases were negotiated well prior to the 'lease commencement date' and many of the leases were in fact developer leases for space in new buildings. With these factors considered the revised lease study would, as shown on page 66 of Exhibit C-2, indicate a weighted average of \$27.14/Sq. Ft. which supports their requested rate.

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

The CARB finds that:

- 1) The Lease Commencement Date is more reliable than using a Lease Agreement Date.
- 2) The location of the subject property is not inferior for a Class 'AA' building.

Board's Decision:

The assessment is **confirmed** at: **\$414,830,000.**

Reason(s) for Decision

The lease rate analysis prepared by the Assessor, which relies upon lease commencement dates as opposed to lease agreement dates, is a more reasonable interpretation of the data. The lease agreement date is not information that is typically available in the market place and it is, in the judgment of the CARB, unreasonable to expect the assessor to amass such data. It may well be that, as in this case, one party may have access to such information as a result of their client list and/or other aspects of their business activities; however, if the information is not generally available it would be unrealistic to expect same to be utilized in application of the mass appraisal process.

The fact that the subject building is subject to a lease that stipulates a rental rate of \$25/Sq. Ft. for several years to come is not a factor that should be given consideration by the assessor. The building should be valued, if using the Income Approach, on the basis of what income the property is deemed capable of producing or, in the case of mass appraisal, what income is considered typical for the property in question as at the valuation date.

New construction or developer leases do, in the judgment of the CARB, constitute an indicator of market rents. It would be unreasonable to expect that any tenant would willingly commit to paying a lease rate that is unrealistic in the market place simply because they are leasing in a new building. Certainly there are considerations, such as naming building privileges, which can have an impact upon the final lease rate, but it would be a mistake to ignore such leases entirely. It is the responsibility of a good analyst to put such weight as is necessary upon such leases.

The CARB is somewhat dismayed that the Complainant would argue that the Bennett Jones lease is anything other than a renewal when, in support of their contention they introduce (Exhibit C-2 pg. 15) a document that is clearly titled "*Lease Renewal, Expansion and Amending Agreement*" and which has an effective date of December 1, 1998.

The parking rate is the same as the rental rate in that it is the responsibility of the Assessor to determine what the typical parking rate is for a property such as the subject. The CARB does not agree with the Complainant that the location of the subject property is inferior to other Class 'AA' buildings and, as a result, is not capable of generating the applied parking rates. The subject property is very well located being within one block of several of the major downtown office buildings. Based upon the evidence of the Complainant (Exhibit C-1 pg. 86) it appears to the CARB that the building lessee may be prepared to subsidize the parking rates for their employees as they are only generating an average of \$285/stall per month which is well below what is typical within the downtown core area.

DATED AT THE CITY OF CALGARY THIS 3 DAY OF August 2011.


C. J. Griffin
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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.*