

**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:

***1023825 Alberta Ltd. /Omers Realty Corporation (as represented by Altus Group Limited),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***M. Vercillo, PRESIDING OFFICER
Y. Nesry, MEMBER
D. Julien, 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 2011 Assessment Roll as follows:

ROLL NUMBER: 068054295
LOCATION ADDRESS: 255 5 AV SW
HEARING NUMBER: 63917
ASSESSMENT: \$255,640,000

This complaint was heard on the 14th and 15th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

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

Appeared on behalf of the Respondent:

- *H. Neumann*
- *A. Czechowskyj*
- *A. Krynski*

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

The Calgary Composite Assessment Review Board (CARB) derives its authority to make this decision under Part 11 of the Act. During the hearing, the CARB noted that the Rebuttal document of the Complainant was not in the CARB's files. As per the "Notice of Hearing" from the City of Calgary, the Rebuttal document's due date was July 6, 2011. According to the records of the Board Clerk, the Rebuttal document was received via email on July 7, at 5:07 pm.

The Complainant claimed that he was under the impression that his Rebuttal document was due seven days prior to the hearing on July 7, 2011.

The Respondent, upon learning that the Rebuttal document was filed late, objected to it being presented at this hearing.

The CARB finds the following with respect to this jurisdictional issue:

- The Complainant failed to disclose his Rebuttal to the Respondent's disclosure at least seven days before the hearing date in accordance with the *"Matters Relating Assessment Complaints Regulation" (MRAC) section 8(2)(c)*.
- The Notice of Hearing from the City of Calgary clearly identifies the Rebuttal due date and was present within the evidence of the Complainant.

Board's Decision:

The CARB **will not allow** the Complainant to present any evidence in rebuttal to the Respondent's disclosure.

With the above in mind, the CARB proceeded to hear the merits of the complaint, as outlined below.

Property Description and Background:

The subject property is part of a large four building complex known as Bow Valley Square and is located in Downtown Calgary. The subject property, which comprises Towers #3 and #4, is a large office and retail building complex, constructed in 1978. The total assessed area is 838,588 square feet (SF) with 411 parking stalls. Building #3 is the north tower located on the southeast corner of 5th Avenue and is the smaller of the two buildings with an assessed area of 379,794 SF. Building #4 is the south tower located on the northwest corner of 4th Avenue and 2nd Street SW. Building #4 is the larger of the two buildings with an assessed area of 458,795 SF. According to the Complainant, the entire Bow Valley Square complex is undergoing an extensive redevelopment program at a cost of \$11,330,000. The subject property is and will incur about half of the entire redevelopment cost.

The subject is assessed on the Income Approach to valuation including the following parameters:

Component	Area (SF)	Rental Rate	Vacancy Rate	Operating Costs
Office Space	729,893	\$23.00	6.00%	\$18.00
Recreation Space	21,948	\$16.00	8.00%	\$ 5.00
Retail Space	65,199	\$30.00	6.00%	\$14.00
Storage Space	21,548	\$10.00	6.00%	\$ 5.00

The Respondent uses a 7.50% capitalization rate in calculating the assessed value.

Issues:

The CARB considered the complaint form together with the representations and materials presented by the parties. There were a number of matters or issues raised on the complaint form; however, as of the date of this hearing, the Complainant addressed the following issues as restated below:

- 1) The assessed areas for office, recreation, retail and the total spaces are incorrect and should be corrected to 714,297 SF, 42,483 SF, 57,617 SF and 836,356 SF respectively.
- 2) The assessed rental rate for office space is inequitable and should be lowered to \$21.00 per SF.
- 3) The assessed rental rate for recreation space is inequitable and should be lowered to \$10.00 per SF.
- 4) The assessed operating costs for office and retail space are inequitable and should be adjusted to reflect actual rates to \$19.00 and \$18.50 per SF respectively.
- 5) The physical condition of the building is not reflected in the assessment and therefore should be reduced by adjusting the Income Approach for one of the following options:
 - a) increase the vacancy allowance to 10%,
 - b) remove the capital value of vacant space by \$50.00 per SF, or
 - c) remove the redevelopment costs (deferred maintenance) of \$5,665,000 (or half of the \$11,330,000) applicable to the subject.

Complainant's Requested Value:

\$191,410,000 on the complaint form revised to either:

- 1) \$209,910,000 for the vacancy adjustment,
- 2) \$222,370,000 for the capital value of vacant space adjustment, or

- 3) \$220,800,000 for the deferred maintenance adjustment.

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

ISSUE 1:	The assessed areas for office, recreation, retail and the total are incorrect and should be corrected to 714,297 SF, 42,483 SF, 57,617 SF and 836,356 SF respectively.
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The Complainant provided a document entitled "Complainant's Written Argument" that was entered as "Exhibit C1" during the hearing. The Complainant along with Exhibit C1 provided the following evidence with respect to this issue:

- A February 17, 2011 email from the Complainant to the Respondent outlined the assessed versus actual spaces contained within the buildings broken down by office, recreation and retail spaces. According to the Complainant, the total actual spaces for office, retail and recreational spaces was to 714,297 SF, 42,483 SF, 57,617 SF. The total of these spaces including storage space (which is not in dispute) is 836,356 SF. The Complainant suggests that if the assessment was adjusted for area alone the value derived would be \$252,590,000.
- A "Tenant Roster" outlining the various spaces occupied by tenants. It was noted during the hearing that the total useable area identified by the roster was 840,108 SF.

The Respondent provided an "Assessment Brief" document that was entered as "Exhibit R1" during the hearing. The Respondent along with Exhibit R1 provided the following evidence with respect to this issue:

- The total area used Income Approach to value in the assessment of the subject is 838,588 SF. This is less than the total space in the Complainant's Tenant Roster evidence.
- The differences in component and total spaces could be due to the renovations currently underway and expected to be completed in October, 2011. The assessment must reflect the condition of the building(s) as at December 31, 2010.

The CARB finds the following with respect to this issue:

- That the Complainant's evidence is contradictory in total space and therefore cannot be relied upon. The Complainant was unable to adequately explain the contradiction.
- That the component and total space discrepancy could be due to the renovations currently underway and expected to be completed in October, 2011.
- The discrepancies are immaterial but may warrant review in future assessments.

ISSUE 2:	The assessed rental rate for office space is inequitable and should be lowered to \$21.00 per SF.
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The Complainant along with Exhibit C1 provided the following evidence with respect to this issue:

- Argument that rental rates should reflect the "Deal Done Date" (the date at which negotiations were finalized) versus the "Lease Start date" (the date the lease began).
- A "Barclay Street Real Estate" graph showing how rental rates have declined for Downtown "A" office buildings from \$42.75 in the 3rd quarter of 2008 to \$21.00 in the 2nd quarter of 2010.
- A "2011 Downtown Office A Rental Analysis" table. The table analysed 27 triple net

lease rates in the downtown area. The table included six of the subject's lease rates. The area's varied in size from 1,279 SF to 279,694 SF (BP Centre). Lease start dates varied from September 1, 2009 to July 1, 2010. The weighted mean of all spaces was \$20.97 per SF. The weighted mean of spaces over 10,000 SF was \$20.20 per SF.

The Respondent along with Exhibit R1 provided the following evidence with respect to this issue:

- A "2011 Downtown Office Net Rental Rates" summary table. The table provided a summary of studies on the asking lease rate. The studies were done by CB Richard Ellis, Barclay Street Real Estate and Avison Young, for 2011 and second quarter of 2010. The table indicated that in the second quarter of 2011, the asking lease rates varied from \$20.00 per SF to \$23.00 per SF.
- A "2011 Downtown Office A Class Rental Analysis" table. The table analysed 22 triple net lease rates in the downtown area. The table included six of the subject's lease rates. The table is essentially the same as that provided by the Complainant, except that the Respondent restricted the analysis to the first six months of 2010 rather than include data from leases whose start dates commenced prior to January, 2010. This would exclude the 279,694 SF BP Centre lease rate of \$20.00 per SF. The mean of the sample was \$23.99 per SF, the median was \$23.75 per SF, the weighted mean of all spaces was \$25.23 per SF and the weighted mean of spaces over 10,000 SF was \$26.20 per SF. The assessment rate used on the office space of the subject is \$23.00 per SF.

The CARB finds the following with respect to this issue:

- That the lease rate applied to the subject's office spaces is reasonable and is supported by the evidence provided by the Respondent.
- That the BP Centre space comprises about 65% of the entire downtown office space analyzed by the Complainant and therefore heavily skews the weighted mean. The next largest space analyzed by the Complainant is 265,000 SF smaller! Therefore, the CARB cannot accept the weighted mean under the Complainant's analysis.

ISSUE 3: The assessed rental rate for recreation space is inequitable and should be lowered to \$10.00 per SF.

The Complainant along with Exhibit C1 provided the following evidence with respect to this issue:

- A copy of a Business Assessment Summary Report for 217 7 AV SW, the Bay Club. The business assessment for this 18,966 SF space was valued at \$9.50 per SF.
- A listing of other World Health Club locations including the Bay Club within the City of Calgary. It is noted by the CARB that only the Bay Club is in the downtown area of Calgary.
- The Tenant Roster of the subject revealed that the Bay Club lease rate was contrasted with the subject's Bow Valley Club space which had base rents varying from \$7.50 per SF to \$14.84 per SF. The subject's recreation space is assessed at \$16.00 per SF.

The Respondent along with Exhibit R1 provided the following evidence with respect to this issue:

- The Bow Valley Clubs lease start dates are dated. Some of them have lease start dates from 2006.
- Unlike the subject's Bow Valley Club recreation space the Bay Club comparable

provided by the Complainant has low ceilings, no access to the "Plus 15" pedway, no restaurant and is the only comparable. Therefore, there is not enough evidence to change the current assessment rate on recreation space.

- A reference to the *Court of Queen's Bench of Alberta; Justice McIntyre; 2010 ABQB 417*. In that decision the Respondent stated that Justice McIntyre found that "...business assessment based on NARV, was being used to capture the rental value of the leasehold property and not the value of the fee simple estate of the property."

The CARB finds the following with respect to this issue:

- That the use of a business assessment rate comparable on the recreation space of the subject, in an Income Approach to value, may not capture the fee simple estate of the property but simply captures the rental value of leasehold interest in that space.
- That the comparable used by the Complainant is not comparable enough to the subject's recreation space and that more comparables were needed to substantiate the Complainant's position on this issue.

ISSUE 4: The assessed operating costs for office and retail space are inequitable and should be adjusted to reflect actual rates to \$19.00 and \$18.50 per SF respectively.

The Complainant along with Exhibit C1 provided the following evidence with respect to this issue:

- A Tenant Rent Roll listing for the subject property as of December 31, 2008 and July 1, 2008. The Complainant highlighted that the retail space operating costs experienced by the tenants are approximately \$19.00 per SF for some office space and \$18.50 for some retail space.

The Respondent along with Exhibit R1 provided the following evidence with respect to this issue:

- A table of "Class A Parking and Operating Costs, 2010", taken from a CresaPartners study. The table compared 41 spaces operating costs including 2 from the subject. The average 2010 operating costs was \$17.64 per SF. The subject had average operating costs of \$19.41 per SF for building #3 and \$19.01 for building #4. The assessment rates applied to the subject are \$18.00 per SF for office space and \$14.00 per SF for retail space. The subject experienced operating costs higher than this on average in 2010 and therefore the assessment operating cost rates applied to the subject are reasonable.

The CARB finds the following with respect to this issue:

- That the subject's site specific operating costs are not supported by any market evidence or studies.
- That the assessed operating costs applied to the subject are reasonable and supported by a third party study.

ISSUE 5: The physical condition of the building is not reflected in the assessment and therefore should be reduced by adjusting the Income Approach for one of the following options:

- (a) increase the vacancy allowance to 10%,
- (b) remove the capital value of vacant space by \$50.00 per SF, or
- (c) remove the redevelopment costs (deferred maintenance) of \$5,665,000

(or half of the \$11,330,000) applicable to the subject.

The Complainant along with Exhibit C1 provided the following evidence with respect to the vacancy allowance issue:

- An undated summary listing of vacant space available in both Towers #3 and #4 along with a separate schematic of where, within the towers, the spaces are located. The listing indicated the unit number and area available for rent for both office and retail spaces. The vacant spaces available for rent varied from 715 SF to 11,962 SF. The total vacant space available was 81,816 SF out of the total 838,589 SF space (agrees to the assessed space) in both towers, or a 9.76% vacancy rate. The Complainant then applies a 10% vacancy rate to office and retail spaces to the Income Approach to value along with revised figures for area, rental rates and operating costs as determined by the Complainant in the previous issues above. In doing so, the Complainant determined a revised assessment of \$209,910,000.

The Respondent along with Exhibit R1 provided the following evidence with respect to the vacancy allowance issue:

- A "2011 Downtown Office Vacancy" summary table. The table provided a summary of studies on office vacancy. The studies were done by CresaPartners, Altus Insite, Barclay Street Real Estate and Avison Young, for 2011 and second quarter of 2010. The table indicated that in the second quarter of 2010, office vacancy varied from 3.45% to 5.23%.
- The Respondent also included a City of Calgary study which found vacancy rates of Class A buildings were at 4.55%. A table of the study entitled "2011 Downtown Office Vacancy Study" analysed 18 office vacancy rates for buildings in the downtown area, including the subject, based on Assessment Requests For Information (ARFI) for the 2010 assessment year. The assessment uses a 6% vacancy for both office and retail space and therefore is reasonable based on the studies.

The CARB finds the following with respect to the vacancy allowance issue:

- That the subject's site specific vacancy rate is not supported by any market evidence or studies.
- That the Respondent use of a 6% vacancy rate is reasonable and supported by both City of Calgary and other third party studies.
- It was determined through questioning, that the vacancy being experienced by the subject is not chronic. In fact, according to the Complainant, the subject's vacancy was very low and almost non-existent in the prior year, attributing the current vacancies to the renovation or redevelopment costs scheduled to be completed late this year.

The Complainant along with Exhibit C1 provided the following evidence with respect to the capital value of vacant space issue:

- Again, the undated summary listing of vacant space available in both Towers #3 and #4 along with a separate schematic of where, within the towers, the spaces are located were presented. In this case, the Complainant determined that based on assessments of other mostly newly developed buildings, the City of Calgary has historically adjusted those assessments, for a \$50.00 per SF allowance for Tenant Improvements (TI). The Complainant then applies this \$50.00 per SF allowance for TI, to the 81,816 SF of vacant office and retail space and determined an adjustment value of \$4,090,800 is warranted. As an alternative to the vacancy allowance calculation, the Complainant again used the Income Approach to value along with revised figures for area, rental

rates and operating costs as determined by the Complainant in the previous issues above, but reduced the assessment for the TI allowance of \$4,090,000. In doing so, the Complainant determined a revised assessment of \$222,370,000.

The Respondent along with Exhibit R1 provided the following evidence with respect to the capital value of vacant space issue:

- That the vacancy allowance or TI adjustment used by the Complainant are typically used for brand new spaces on newly constructed buildings that are without any amenities typically found in other developed spaces like the subject. The vacant spaces of the subject are available for rent and therefore the TI adjustment is not appropriate.

The CARB finds the following with respect to the capital value of vacant space issue:

- That the request for an adjustment for the capital value of site specific vacant space of the subject is without merit. It was determined through questioning, that the vacant space of the subject was and is immediately available for its specific use or purpose and is therefore unlike newly constructed spaces of brand new buildings. In those instances, the vacant spaces typically lack plumbing, electrical, walls and almost any other amenity required for an office or retail space to operate. That is not the case with the vacant spaces of the subject.

The Complainant along with Exhibit C1 provided the following evidence with respect to the deferred maintenance issue:

- A listing of "Building Permits Status" of the various maintenance projects currently underway on the subject property. The dates of the 22 permits are both in 2010 and 2011.
- That the subject property is "undergoing substantive renovations to correct Curable Physical Deterioration – Deferred Maintenance. Deferred maintenance is measured as the cost to cure the item or restore it to a new or reasonably new condition." The Complainant submitted that the total cost of the deferred maintenance was \$11,330,000 of which approximately \$5,665,000, or half, applied to the subject. Again as an alternative to both the vacancy allowance and the capital value of vacant space calculations, the Complainant again used the Income Approach to value along with revised figures for area, rental rates and operating costs as determined by the Complainant in the previous issues above, but reduced the assessment for the deferred maintenance allowance of \$5,665,000. In doing so, the Complainant determined a revised assessment of \$220,800,000.

The Respondent along with Exhibit R1 provided the following evidence with respect to the deferred maintenance issue:

- Referenced a few Assessment Review Board Orders and Municipal Government Board (MGB) decisions that viewed the deferred maintenance issues in those cases as maintenance of property that a prudent owner would undertake to maintain their investment in that property and is typically not deductible. The Respondent asserted that maintenance whether deferred or not, is a management decision and is not typically considered as an adjustment to the assessment.

The CARB finds the following with respect to the deferred maintenance issue:

- That the request for an adjustment for the deferred maintenance of the subject is without merit. The CARB is of the opinion that the redevelopment costs have been deferred to a point that they are now necessary to maintain and not necessarily improve the subjects

ability to compete in the open market with other buildings for perspective tenants.

- It was determined through questioning, that the redevelopment costs of the subject are mostly restricted to common areas of the first few floors and that the tenancy spaces adjacent to those common areas have not materially suffered or incurred additional vacancy as a result.

Board's Decision:

The complaint is denied and the assessment is confirmed at \$255,640,000.

- The CARB is of the opinion that the Complainant's issues are largely site specific without any support from market evidence. The assessment of the subject is based on mass appraisal using common techniques and supported by market evidence. The assessment of the subject cannot not be based on site specific attributes that may change on a daily, monthly or yearly basis.

DATED AT THE CITY OF CALGARY THIS 17 DAY OF August 2011.



Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure

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.*