

**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:

1604954 Alberta Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

B. Horrocks, PRESIDING OFFICER

D. Cochrane, MEMBER

J. Massey, 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 2012 Assessment Roll as follows:

ROLL NUMBER:	048039002
LOCATION ADDRESS:	1925 18 AV NE
HEARING NUMBER:	68257
ASSESSMENT:	\$44,970,000

This complaint was heard on the 28th day of August, 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:

- Ms. D. Chabot (Altus Group Limited)

Appeared on behalf of the Respondent:

- Mr. G. Good (City of Calgary)
- Ms. C. MacMillan (City of Calgary)

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

- [1] There were no concerns with the Board as constituted.
- [2] There were no preliminary matters. The merit hearing proceeded.

Property Description:

[3] The subject property, commonly referred to as the Medallion Business Centre, is a 4.47 acre parcel located in the Vista Heights community in NE Calgary. The site is improved with an 188,856 square foot (SF) four storey office tower, a 5,413 SF standalone building described as recreational space and a 271 stall enclosed parking garage that were constructed in 2009. The office buildings contain 194,269 SF of rentable area and are assessed as A+ quality utilizing the Income approach to value.

Issues:

[4] The Assessment Review Board Complaint Form contained eight Grounds for the Complaint. At the outset of the hearing the Complainant advised there was only one outstanding issue, namely: "The assessment of the subject property is in excess of its market value for assessment purposes."

Complainant's Requested Value: \$35,100,000 (Complaint Form)
\$32,500,000 (Hearing)
\$37,130,000 (Alternate)

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

Issue: What is the market value for assessment purposes?

- [5] The Complainant's Disclosure is labelled C-1.
- [6] The Complainant submitted that the subject property sold in September 2011, shortly after the evaluation date for assessment purposes, and requested the assessment be reduced to the sale price of \$32,500,000. The Complainant submitted that the sale price is the best indicator of market value.

[7] The Complainant, at page 29, provided a document titled Receiver's Second Report dated April 29, 2011, prepared by RSM Richter Inc. as Receiver and Manager of Vista Heights Office Complex Inc. and Vista Heights Holding Corp., the owners of the subject property. The purpose of the report was to:

- a) "Summarize the activities of the Receiver since the First report; and
- b) Respectfully recommend that this Honourable Court make orders:
 - i. approving the Sale Agreement, and authorizing and directing the Receiver to take such additional steps as may be necessary or desirable for the completion of the transaction and conveyance of the Property (as defined herein) to Romspen;
 - ii. vesting in Romspen, as of closing, title to the Property, free and clear of all liens, charges, security interests and other encumbrances, subject only to Permitted Encumbrances (as defined below) and directing the Registrar of Land titles to register title to the property in Romspen's name; and
 - iii. approving the receiver's actions, conduct and activities as set out in this report and other reports filed by the Receiver in these proceedings."

[8] The Report describes how Vista Office, the owner and operator of the subject had been placed in receivership and how the Receiver had unsuccessfully attempted to lease additional space. The Report also describes a sales process undertaken by the Receiver, which had been approved by the Court, and which ultimately led to the recommendation to transfer the subject property to Romspen, who held a first charge on the Property (the "Secured Debt"). The Report states "the sale price will be satisfied by a set-off against amounts owing as Secured Debt."

[9] The Complainant, at page 26, provided the Land Title Certificate noting the Value associated with the Order was \$32,500,000 in support of its request.

[10] The Respondent's Disclosure is labelled R-1.

[11] The Respondent, at page 21, provided the RealNet Report on the sale of the subject noting the Sale Type was identified as "Non-Arms". The Respondent submitted that Romspen was the main creditor and as a result the sale was non arms length.

[12] The Board finds the sale was the result of a legal process by which a lien on the property was enforced and as such is not a true representation of market value. The Board places no weight on it. It is noted that the judicial sale process had initially resulted in two conditional Bids. One Bid was for \$33.75 million while the other was for \$38.5 million. At best, those bids might identify the range of market value to be expected from an open market sales process.

Issue: What is the net market rent of finished office space for assessment purposes?

[13] As an alternate to the sale price for establishing market value, the Complainant requested that the net market rent for the finished office space be reduced from the assessed rate of \$19.00/SF to \$17.00/SF and the net market rent for the unfinished office space be reduced to \$12.00/SF. The Complainant, at page 77, provided an email from the property manager which identified the area of the unfinished space as 57,335 SF.

[14] The Complainant, at page 116, provided a table titled 2011 Leases Closest to the Valuation Date, noting the leases ranged from \$17.00 to \$18.00/SF and the median is \$18.00/SF. It was noted that the largest leases (suites 301 and 401) are for \$18.00/SF for a 7 year term. However the rent roll, on page 45, shows that tenant received free rent for 4 months for the first 3 years and for 3 months for the next 4 years. In addition, that same tenant occupies suite 201 and has 6 months free rent.

[15] The Respondent, at page 54, provided a table titled 2012 Lease Comparables, which contained 8 leases, 3 of which were in the subject. The leases range from \$16.00 to \$35.00/SF with a median of \$18.00/SF. In response to a question, the Respondent was unable to verify the purported \$35.00/SF lease in the subject. The Complainant submitted that lease did not exist. The 2 remaining leases in the subject were for \$16.00 and \$17.00/SF.

[16] The Board finds there is support for the requested net market rent of \$17.00/SF for the finished office space.

Issue: What is the net market rent of the unfinished office space for assessment purposes?

[17] The Complainant, at page 79, provided a table titled Leasehold Improvement which contained 5 leases in the subject with leasehold improvement allowances ranging from \$3.57/SF to \$5.71/SF, with a median of \$5.00/SF. The Complainant argued that if the net market rent for the finished space is \$17.00/SF, the net market rent for the unfinished space should be \$12.00/SF after the allowances are taken into consideration.

[18] The Respondent, at page 25, provided an untitled chart which contained 5 sales. The Respondent submitted that the market in 2011 did not devalue unfinished space as demonstrated in the sales of 109 Quarry Park and 4311 12 ST NE where the sale price exceeded the assessment in both cases.

[19] The Complainant, on page 39 of rebuttal (C-2), cited *697604 Alberta Ltd. v. Calgary (City of)*, 2005 ABQB 512, **noting paragraphs 27 & 29 specifically:**

“[27] For example, the second factual conclusion reached by the MGB reads: “Capital improvements are an assessable part of the real estate.” I accept the Applicant’s submission that this is only so once the improvements have been done and cannot operate on an anticipatory basis. Circumstances could easily have arisen in which the improvements might never have been done. In my view, it was unreasonable for the MGB to speculate about what might happen in the future, for example, renovating the premises, in order to determine value in the past.”

"[29] Another error was made by the MGB in its analysis of "Lease Up Costs" (p 13). The MGB determined that: ".....tenant improvements are an assessable part of the realty...". While this is correct, in my view, tenant improvements that do not exist at the time of the assessment cannot be considered assessable; including them demonstrates an unreasonable analysis of the evidence."

[20] The Board finds there is sufficient evidence to support the request to reduce the net market rent of the unfinished space from \$19.00/SF to \$12.00/SF.

[21] Applying the net market rent for finished office space of \$17.00/SF and net market rent for unfinished office space of \$12.00/SF, along with an 11% vacancy allowance, \$12.50/SF operating costs, 1% non-recoverable costs and a capitalization rate of 7.00% in the Income approach to value formula yields an assessed value of \$37,138,539.

Board's Decision:

[22] The 2012 assessment is reduced to \$37,130,000.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF OCTOBER 2012.


B Horrocks
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.*

For Administrative Use

Subject	Property type	Property Sub-type	Issue	Sub-issue
CARB	Office	Low rise	Income Approach	Net market rent