

**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:**

***Midnapore Property Investments LInc. (as represented by Altus Group), COMPLAINANT***

**and**

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

**before:**

***Board Chair, W. Garten  
Board Member J. Rankin  
Board Member Y. Nesry***

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: 201050135**

**LOCATION ADDRESS: 903 8<sup>th</sup> Ave. S.W.**

**HEARING NUMBER: 64332**

**ASSESSMENT: \$34,230,000**

This complaint was heard on 11 day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *D. Chabot - Representing Altus Group*

Appeared on behalf of the Respondent:

- *D. Satoor - Representing the City of Calgary*

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act.

There were no procedural or jurisdictional matters brought before the Board.

The Board proceeded to hear the complaint, as outlined below.

**Property Description:**

The Subject Property is a new high rise office building located in the west end of the downtown core at 8<sup>th</sup> street and 8<sup>th</sup> avenue known as Eight West, Phase 1. The subject consists of 140,532 SF of predominantly office space and was constructed in 2008/2009. It is not connected to the +15 system. The Building has 43 parking stalls.

**Issues:**

Is the Building subjected to Chronic Vacancy Allowance which affects the assessed value of the property.

**LEGISLATION**

**The Municipal Government Act, R.S.A. 2000, c. M-26 (MGA);**

s. 1 (n) *"market value" means the amount that a property, as defined in section 284(1)(r) might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.*

s. 284 (1)(r) *"property means"*

- i) *a parcel of land,*
- ii) *an improvement, or*
- iii) *a parcel of land and the improvement to it;*

s. 467(1) *An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.*

s. 467 (3) *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*

- a) *the valuation and other standards set out in the regulations,*
- b) *the procedures set out in the regulations, and*
- c) *the assessments of similar property or businesses in the same municipality.*

***Matters Relating to Assessment and Taxation Regulation, Alta Reg 220/2004 (MRAT);***

*s. 2 An assessment of property based on market value*

- a) must be prepared using mass appraisal*
- b) must be an estimate of value of the fee simple estate in the property, and*
- c) must reflect typical market conditions for properties similar to that property*

*s. 4(1)(a) The valuation standard for a parcel of land is market value*

*s. 5(1) The valuation standard for improvements is*

- a) the valuation standard set out in section 7, 8 or 9, for the improvements referred to in those sections, or*
- b) for other improvements, market value*

*s. 6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvement is market value unless subsection (2) or (3) applies.*

**Complainant's Requested Value:** \$22,850,000

**Complainant's Position:**

The Complainant provided evidence package C-1, C-2 and C-3 during her presentation. The Complainant argued that the vacancy of the property is Chronic since the property has been substantially vacant since the completion of construction in the summer of 2008.

On page 18 of C-1 the Complainant brought to the Board's attention that the vacancy as of July 1, 2010 (Valuation Date) was 43,789 S.F. or 31.16%. Further the Complainant provided additional evidence per the following ARB decisions increasing the vacancy rate due to chronic vacancy:

- ARB 0832/2010-P – C-1
- CARB 2158/2010-P – C-1
- CARB 2089/2010-P – C-1
- CARB 1575/2011-P – C-2
- CARB 1573/2011-P – C-3

When questioned, the Complainant argued that although the in-place rents may support the assessed value, the Tenant Improvement Allowances were much higher than market thus driving up the current rents.

When questioned on the actual completion date of the building, the Complainant provided evidence on pg. 17 of C-1 where Torode Commercial Limited (original owner) advertised the

completion of the building as "summer 2008".

The Complainant argued in her summary that although the property did sell in April 2010, this sale price should not be taken into consideration since it was a distress sale and the selling price has no relationship with the market value of the property. Further, had the property sold for less than the current assessment then the Respondent would not have used it in his argument and would have simply ignored the sale as distress.

The Complainant requested the Board to reduce the assessment from \$34,230,000 to \$22,850,000 to reflect a 25% vacancy allowance.

**Respondent's Position:**

The Respondent provided evidence package R-1 and R-2 during his presentation. The Respondent argued that the building was only approximately 18 months old as of valuation date and the vacancy is being reduced normally. Further, the Assessment Request for Information confirms that the rents support the assessed value as the rents overall are confirmed (in the Assessment Request for Information) to be higher than the \$19.00 used to calculate the 2011 assessment of \$34,230,000.

On page 29 of R-1 the Respondent provided evidence of a judicial sale of the subject building dated April 1, 2010 for a selling price of \$41,450,000 in an arm's length transaction. Further, it was pointed out that since this was a Distress Sale that the price was not be used for assessment purposes. However since the property sold at a time when it was substantially vacant then it appeared obvious that it was sold for the fee simple estate.

In response to the Complainant's evidence regarding previous board decisions to increase the vacancy allowance, the Respondent pointed out that in these cases the buildings were all older and vacancy was increasing over time and not decreasing as per the subject building.

The Respondent requested the assessment to be confirmed.

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

The CARB finds that:

1. The Selling Price of the property is the best determination of Market Value.
2. 18-24 months is not an unusually large amount of time to lease up a new building.

**Board's Decision:**

It is the Board's Decision to confirm the Assessment at \$34,230,000.

**Reason(s) for Decision**

From the evidence provided by the Complainant and the Respondent the Board placed the most weight on the Distress Sale completed on April 1, 2010. The sale price was \$41,450,000 which occurred as a result of a judicial sale. The lease up of the building was continuing during this judicial sale and the board found that all current leasing had been completed prior to the transfer date.

From the evidence provided in the Assessment Request for Information, Rental rates achieved were all higher than those used in the City of Calgary 2011 Assessment.

Although a forced sale is not a true indication of market value per the definition in the MGA section 1 (n) "*market value*" means the amount that a property, as defined in section 284(1)(r) might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.

A typical sale under these conditions would normally achieve a lower than market value. According to the IAAO publication, "Standard on Verification and Adjustment of Sales": "A foreclosure is not a sale but the legal process by which a lien on a property is enforced. These sales typically are on the low side of the value range because the financial institution is highly motivated to sell and may be required by banking regulations to remove the property from its books".

The Board found that in this case the selling price is higher than the assessment value used by the City of Calgary. To reduce the assessment below that of the City of Calgary assessment would provide a value far below market value of the property.

The Board was not provided with any evidence that new buildings are considered to have chronic vacancy for a period of time prior to initial lease-up. In addition the Board found that there was no evidence to suggest that this new building was not leasing normally and as such could not justify the increase in vacancy allowance.

DATED AT THE CITY OF CALGARY THIS 16 DAY OF SEPTEMBER 2011.



W. Garten  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	CARB Decision 1574/2011-P
3. C3	CARB Decision 1573/2011-P
4. R1	Respondent Disclosure
5. R2	CARB Decision 1451/2011-P

*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.*