

**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:

***Rocky Mountain Plaza (Calgary) Ltd.,
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***L. Wood, PRESIDING OFFICER
R. Deschaine, MEMBER
D. Morice, 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:	068228402
LOCATION ADDRESS:	615 MACLEOD TR SE
HEARING NUMBER:	63187
ASSESSMENT:	\$15,560,000

This complaint was heard on 6 day of September, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *Mr. D. Genereux* *Agent, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *Mr. D. Satoor* *Assessor, City of Calgary*

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

There were no procedural or jurisdictional matters raised by the parties at the hearing.

Property Description:

The subject property is known as Rocky Mountain Plaza. It is a 15 storey office building located in the Downtown Commercial Core. It is comprised of 194,475 sq. ft. and is currently assessed as having 175,863 sq. ft. of office area and 18,611 sq. ft. of retail area. The building is situated on 0.91 acres and the land use designation is Direct Control District. The building was constructed in 1972 and is assessed as a Class B office building. There are 102 parking stalls associated with this site.

There are several tenants in the building that have tax - exempt status including the Calgary Police, Bow Valley College, University of Lethbridge, United States Consulate, City of Calgary and Urban Society for Aboriginal.

The total assessment for this property is \$27,810,422 which includes the exempt portion:

- Taxable \$15,560,000
- Exempt \$12,246,500

Issues:

1. The assessed office and retail areas reflect an incorrect amount of square footage and should be corrected.
2. The assessed number of parking stalls 102 should be reduced to 14 stalls and 88 parking stalls should be exempt.
3. The assessed rate applied to the parking stalls should be reduced from \$400.00 per stall to \$350.00 per stall.

Complainant's Requested Value: \$9,740,000 (taxable assessment)

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

1. The assessed office and retail areas reflect an incorrect amount of square footage and should be corrected.

The Complainant submitted a reallocation of office area from 175,863 sq. ft. to 187,852 sq. ft. and retail area from 18,611 sq. ft. to 4,856 sq. ft. to accurately reflect the allocation of space. He submitted the Monthly Accounts Receivable Report for the period ending July 31, 2010 for the subject property in support of the area allocation (Exhibit C1 page 39). He indicated the assessed rental rates of \$14.00 psf applied to office and \$21.00 psf applied to retail remains unchanged.

The Respondent submitted the issue regarding the areas should not be addressed by the Board, and the Complainant failed to provide photographs of the interior space in support of his request.

The Board finds there was insufficient evidence to warrant a change in the office and retail areas. The Board notes there were vacant areas reflected on the Complainant's Monthly Accounts Receivable Report (approximately 2,000 sq. ft. of vacant space). The Board also noted that the Complainant was unsure what the disputed square footage of retail was used for in the subject property. There was no evidence from either party before the Board regarding measurements. The issue in regards to area allocation can be difficult to resolve if there is no clear evidence before the Board to base its finding. However, it is a common complaint and there is nothing to prevent the Complainant, nor should there be, from bringing that issue before the Board.

2. The assessed number of parking stalls 102 should be reduced to 14 stalls and 88 parking stalls should be exempt.

The Complainant requested that only 14 parking stalls should be assessable and that the remaining 88 parking stalls should be exempt to reflect the tax exempt status of several tenants in the building. He argued the parking stalls are required for carrying out their business and one is not separate from the other. The Complainant indicated that this matter was before the Board in 2010 and the exemption was granted (CARB 1579-2011-P)(Exhibit C1 pages 45 – 50). The Complainant indicated that even though this decision has since been appealed to the Court of Queen's Bench, the parties have agreed in the past that outstanding decisions before the courts carry no weight. He submitted that this Board should not get bogged down with legalities and simply carry forward last year's decision. In regards to one of the tenants, Alberta Infrastructure, objecting to an exemption applying to their space, he argued that no individual has the right to tell the owner what to do with his property. The Complainant indicated that he was there to represent the property owner of the building, not the tenants.

The Respondent submitted that CARB 1579-2011-P has been appealed to the Court of Queen's Bench on several grounds including the Board's finding that an exemption should apply to 88 parking stalls without any evidence to support it (Exhibit R1 pages 80 – 87). The Respondent referred the Board to several exemption provisions in the *Municipal Government Act* (section 362(1)) and *Community Organization Property Tax Exemption Regulation* (sections 15(k)(i) and (ii)) (Exhibit R1 pages 19 - 21). The Respondent argued that there is no evidence that the parking stalls are used for the purpose of or in connection with the operation of the charitable or

benevolent business in the building. It is only the leased office area that is eligible for exemption from taxation. Moreover, it is the tenant who applies for an exemption, not the property owner (Exhibit R1 pages 55 – 61).

The Respondent submitted that it is the property owner who is the assessable entity because the property owner maintains control over the parking stalls. In this case, there is no evidence that it is the tenant. He argued that typically it is the property owner who sets the rules and regulations pertaining to the parking stalls, restricts the use to specific people or vehicles and obtains significant revenues from the rental of parking stalls (Exhibit R1 pages 25 & 26). The Respondent argued there is no evidence before the Board to suggest the tenant holds the parking stalls and even if they do, there is no evidence that the business is carried out with those spaces. The Respondent referred to the Ontario Court of Appeal case *Gottardo Properties (Dome) Inc. v. Toronto (City)*, 1998, Carswell 3004; 111 O.A.C. 272 (Ont. C.A.) in support of his argument (Exhibit R1 pages 146 – 162).

The Respondent submitted letters from Alberta Infrastructure, one of the tenants in the building, dated December 2010 (Exhibit R1 pages 88 - 91). This letters were sent to Altus Group Ltd. and the City Manager stating that they were not advised that Altus Group Ltd. was representing them at the assessment review board hearings and they are opposed to any exemption application pertaining to their leased space.

The Board finds there was insufficient evidence before it to suggest that an exemption should apply to 88 of the 102 parking stalls. There was no evidence (e.g. leases) before the Board to determine whether or not the exempt tenants in the building have any agreement in place with the property owner which would suggest the exemption should be applied to the parking stalls as well. The Board noted that the Respondent argued that an exemption is not carried forward to the parking stalls unless there is evidence or extenuating circumstances; however, when asked by the Board to provide examples of such extenuating circumstances, he was unable to do so.

3. The assessed rate applied to the parking stalls should be reduced from \$400.00 per stall to \$350.00 per stall.

The Complainant submitted the lease rates for the subject property's parking stalls in 2009 that ranged between \$200.00 - \$350.00 per stall (Exhibit C1 pages 53 & 54). He also presented the parking and operating costs for the subject property from 2007 (Quarter 3) and 2008 (Quarter 1) that indicated \$305.00 per stall as reported in Cresa Partners Corporate Real Estate Service Advisors ("Cresa Partners") (Exhibit C1 pages 55 - 56).

The Respondent submitted that the parking stalls for B class downtown office buildings were assessed at a rate of \$400.00 per stall (Exhibit R1 page 105). He submitted the Cresa Partners Report 2010 (Quarter 2) which reflected the parking and operating costs of the subject building indicating the parking stalls are \$325.00 per stall (Exhibit R1 page 106).

The Board finds the Complainant presented evidence that was somewhat dated in regards to the parking rates for the subject property. The Cresa Partners reports were dated 2007 and 2008 and the parking rates for the subject property were from 2009. However, even if the Board was tempted to reduce the assessed parking rates to \$350.00 per stall based on the evidence that parking rates have remained relatively constant over the last few years, the impact on the subject property's overall assessment would be insignificant.

Board's Decision:

The decision of the Board is to confirm the 2011 assessment for the subject property at \$15,560,000 and the exempt portion of \$12,246,500 remains unchanged.

DATED AT THE CITY OF CALGARY THIS 27 DAY OF OCTOBER 2011.



Lana J. Wood
Presiding Officer

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

EXHIBIT NO.	ITEM
1. C1	Complainant's Submission
2. R1	Respondent's Submission

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.*