

**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:

1270618 Alberta Inc. (as represented by Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Kipp, PRESIDING OFFICER

R. Deschaine, MEMBER

J. Pratt, 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:	200 495 158
LOCATION ADDRESS:	1215 – 13 Street SE, Calgary AB
HEARING NUMBER:	63974
ASSESSMENT:	\$6,400,000

This complaint was heard on the 21st day of September, 2011 at the office of the Assessment Review Board located at Floor No. 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12.

Appeared on behalf of the Complainant:

- *D. Genereux (Altus Group)*

Appeared on behalf of the Respondent:

- *A. Jerome and C. Neal (Assessment Business Unit)*

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

Three procedural matters were raised:

1. New issues
2. Rebuttal evidence
3. Appraisal Institute of Canada – Jurisdictional Exception

1. New Issues:

Respondent:

The Respondent raised the matter of the Complainant attempting to introduce new issues. The Complaint form filed March 4, 2011 stated in Section 5, point no. 8: "The assessed value is unfair, inequitable and incorrect because:

- a. The vacancy and credit allowances should be no less than 20%."

When the Complainant's disclosure brief was filed on August 9, 2011, it showed that the Complainant would be pursuing changes to rent rate and capitalization rate. The Matters Relating To Assessment Complaints Regulation 310/2009 (MRAC) states at Division 2(9)(1): "*A composite assessment review board must not hear any matter in support of an issue not identified on the complaint form.*"

After the Assessment Explanation Summary was provided on January 18, 2011, the Complainant had plenty of time to review it and determine which issues would form the basis of the complaint. By adding issues to the disclosure brief that were not set out in the complaint form, the Complainant is attempting to contravene the Municipal Government Act and MRAC.

As support for the Respondent's position, four 2010 and 2011 Calgary CARB decisions were introduced wherein new issues were not permitted at hearings.

Complainant:

The Complainant opined that this is not a valid preliminary issue. The Municipal Government Act RSA 2000 Chapter M-16 states at section 460(5) that a complaint can be, among other things, about an assessment or an assessment class as shown on an assessment notice. Both of these were marked on the form. The complaint form is

simply a notification that the complaint is being filed. An attachment to the form relating to Section 5 – Reasons for Complaint listed seven “Additional Grounds For Appeal”. Point 1 states that the complaint is filed based on information contained in the Assessment Notice as well as preliminary observations and information from other sources and therefore the requested assessment is preliminary in nature and may change. Point 2 states that *“the assessment of the subject property is in excess of its market value for assessment purposes.”* Market value was estimated by the assessor using an income approach and in challenging the assessment, the Complainant is entitled to consider any of the input factors to the income approach including rent rates and capitalization rate.

The intent of the Act and regulations is to prevent “ambushes” at hearings. In this case, all pertinent evidence was filed in the disclosure document and it was filed in accordance with timelines specified in the regulations. Therefore, the arguments and evidence relating to rent rate and capitalization are valid and properly before the Board.

Board Decision on Preliminary Matter 1:

The Complainant may provide evidence and argument to the Board with respect to rent rates and capitalization rates. Point 2 in the attachment to Section 5 of the Complaint form stated that the assessment was in excess of the market value of the property. Market value was estimated by the Respondent using the income approach. The Complainant can only challenge the income approach by challenging any or all of the input factors. This includes rent rates, vacancy rates, operating expenses, non-recoverable expenses and capitalization rates. Building class is also a factor that the Complainant may address in evidence and argument since that factor was noted on the complaint form.

The Board is not bound by prior decisions of assessment review boards or the Alberta Municipal Government Board however; the Respondent had provided copies of four Calgary CARB decisions from complaints in 2010 and 2011 and these were reviewed by this Board. In the opinion of the Board, three of the four do not relate to this matter and the fourth is a very brief decision and the Board cannot determine what facts were before that other CARB that lead to the decision.

2. Rebuttal evidence: The Respondent raised the matter that the rebuttal evidence filed on behalf of the Complainant was not rebuttal but merely an attempt to provide data and information that should have been in the original evidence disclosure brief. One of the reasons for this objection was that the Respondent had not set out any evidence in its disclosure brief that related to any of the issues of the complaint. Therefore, if there was no Respondent’s evidence then there was nothing to rebut.

The Complainant pointed out that the only way to truly tell if the rebuttal evidence is legitimate is to wait until the time for rebuttal comes during the hearing. At that time, the Board will be in a better position to judge the validity of the rebuttal evidence.

Besides, there is nothing in the rebuttal document that the Respondent does not already know about.

Board Decision on Preliminary Matter 2:

The Board agreed with the Complainant that the validity of the rebuttal evidence would best be tested at the appropriate time for its introduction – once all of the primary evidence and argument had been heard.

At the point in the hearing where the Complainant could rebut evidence of the Respondent, the Board found that the Respondent had not presented any evidence on the merit issues and therefore there was nothing for the Complainant to rebut. The rebuttal document was therefore not allowed into the hearing.

3. Appraisal Institute of Canada – Jurisdictional Exception

This preliminary matter was simply a notification by the agent for the Complainant pursuant to the standards of professional practice that govern members of the Appraisal Institute of Canada (AIC). This notification, while an obligation of the AIC member, had no bearing on this hearing or on the matters that were to come before this Board.

Property Description:

The property that is the subject of this complaint is classed as a lowrise office building. It is a two storey building that was built in 1916. The assessment record shows 29,491 square feet of above grade office space and 4,017 square feet of office space below grade. The building occupies a 28,848 square foot site in Inglewood community of Calgary. The property is adjacent to the Alyth/Bonnybrook industrial area.

For 2011, the property is assessed as a Class “A” suburban office. Total assessment is \$6,400,000 which indicates a unit rate of \$191.00 per square foot of building area.

Issues:

The complaint form filed by the Complainant on March 4, 2011 was described in the Procedural or Jurisdictional Matters section of this decision.

At the hearing, the Complainant focussed on two issues:

Issue 1: What is the proper classification for the property?

Issue 2: Is the subject property assessment equitable with assessments on similar properties?

Complainant’s Requested Value: \$3,540,000

Party Positions on the Issues:**Complainant’s Position:**

Issue 1: What is the proper classification for the property?

For assessment purposes, the Respondent classifies this property as a Class "A" suburban office.

The building is 94 years old and still has its original windows and the exterior is tin over a wood frame. These are not the physical characteristics of a Class "A" building. The location of the property is such that its desirability is impaired. It is at the intersection of 13 Street SE with 17 Avenue SE, just beyond a blockade in 13 Street SE so even though the property has a 13 Street address, it has no access from that roadway. Traffic to the property must travel south on 14 Street and then west along 17 Avenue to the property. 17 Avenue is blocked a few feet east of the property therefore there is just one way in and one way out.

The property should be reduced to a "B" or lower classification and assessed accordingly.

<u>Parameters</u>	<u>2011 Assessment</u>	<u>If a Class "B" Assessment</u>	<u>Requested Assessment</u>
Office rent rate	\$19.00/Sq. Ft.	\$14.00/Sq. Ft.	\$12.25/Sq. Ft.
Below Grade office rent rate	\$ 8.00/Sq. Ft.	\$8.00/Sq. Ft.	\$ 8.00/Sq. Ft.
Vacancy allowance	10.0%	10.0%	10.0%
Operating cost rate	\$12.50/Sq. Ft.	\$12.50/Sq. Ft.	\$12.50/Sq. Ft.
Non-recoverable expense rate	2.0%	2.0%	2.0%
Capitalization rate	7.50%	8.75%	10.0%

As a Class "B" suburban office, the assessment should be \$4,000,000.

Recognizing the location and character of the property, the requested assessment is \$3,540,000.

The Complainant undertook a comprehensive rent rate study, examining numerous buildings in the south-central area of the city. Both Class "A" and "B" buildings were surveyed for lease data. From the data, it is concluded that the appropriate rent rate for the subject building is \$12.25 per square foot. For Class "B" buildings, the rent rate is \$14.00 per square foot.

The capitalization rate for Class "A" properties, assessed by the income approach, is 7.50%. For Class "B" properties, the rate is 8.75%.

Given the age and location of the subject property, the additional risk of ownership and with consideration given to the short remaining economic life, the capitalization rate should be increased by at least 1.25% to 10.0%.

Issue 2: Is the subject property assessment equitable with assessments on similar properties?

The Complainant presented a table of data outlining assessment and property criteria on nine properties with some similarities to the subject. Class "B" buildings with construction dates from 1969 to 1979 were the most comparable ones available. All of these were assessed using an income approach with the capitalization rate at 8.75%. Assessments ranged from \$95 to \$137 per square foot of building area. Mean and median averages indicate that a rate around \$127 to \$130 per square foot would be applicable to the subject property.

Respondent's Position:

There was no evidence provided by the Respondent regarding the issues. The brief filed by the Respondent concerned only the matters covered as preliminary procedural matters.

Board's Decision:

The assessment is reduced to \$4,300,000.

Reasons for the Decision:

It was clear to the Board that the subject property should not be in the Class "A" suburban office stratum. Most indications were that it should be in one of the lower classes for office properties, however the only evidence before the Board was for Class "B" properties.

Through evidence and questioning of the parties, it was learned that Class "B" suburban offices in the southeast quadrant of Calgary (where the subject property is) are assessed using a \$15.00 typical office rent in the income approach.

The Board did not accept the Complainant's argument for an increase in the capitalization rate to 10.0%. The Respondent had argued that this would create an inequity if this one property was assessed at that higher rate. If there had been evidence regarding capitalization rates for lower classes of suburban offices (if there are such classes), then the Board might have been swayed.

The supported evidence related to Class "B" properties. With the typical rent of \$15.00 applied to the office area along with the other parameters of the Class "B" income approach formula, the Board calculated the assessment at \$4,300,000. This amount, at \$128.33 per square foot of building, falls within the range of the Complainant's equity comparables.

DATED AT THE CITY OF CALGARY THIS 24 DAY OF October 2011.



W. Kipp
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.*

For Administrative Use:

Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Office	Stand Alone Low Rise	Income Approach	Net Market Rent Capitalization Rate Equity