

**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:

658432 Alberta Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Mowbrey, PRESIDING OFFICER

H. Ang, MEMBER

T. Usselman, 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: 068107408

LOCATION ADDRESS: 209 8th Avenue SW

HEARING NUMBER: 63191

ASSESSMENT: \$5,550,000

This complaint was heard on 11th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *D. Chabot* *Agent, Altus Group Limited*

Appeared on behalf of the Respondent:

- *H. Neumann* *Assessor, City of Calgary*

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

Upon questioning by the Presiding Officer, the parties indicated no objection to the composition of the Board. In addition, the Board advised the parties that the Board had no bias on this file.

No objections on procedure or jurisdiction were raised.

Property Description:

The subject property is located in the downtown commercial core along Stephen Avenue. The subject property has a site area of 6,497 square feet and a rentable area of 37,832 square feet. The subject property is a 6 story multi-tenanted building, with retail on the main floor and offices on the remaining 5 floors. The subject property is a C quality building and was constructed in 1910.

Issues:

What is the correct capitalization rate for the subject property?

Complainant's Requested Value: \$4,320,000.

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

What is the correct capitalization rate for the subject property?

The Complainant argued that the only issue is the capitalization rate on the subject property which should be 9% instead of the assessed 7%. The Complainant argued that the subject property should not be classified as predominant retail as the majority of rentable area is office. The Complainant advised the Board that there was agreement

with all the parameters with the exception of the capitalization rate. The Complainant, using the same parameters, but with a 9% capitalization rate, arrived at a valuation conclusion of \$4,320,000. The Complainant advised the Board that third party publications identify the subject property as a C office building. (Exhibit C-1 pages 18 and 19).

The Complainant advised the Board that the City of Calgary reports indicates Downtown Capitalization Rates for class C buildings should be 9.25 %. (Exhibit C-1 page 35). The Complainant further advised the Board that the assessment department applied a 0.25% reduction in the applied capitalization rate, regardless of class of building, for those buildings fronting the Stephen Avenue Mall. (Exhibit C-1 page 39).

In support of the Complainant's capitalization rate, the Complainant advised the Board that two office buildings in close proximity to the subject property had capitalization rates of 8.75% and 9% respectively. (Exhibit C-1 pages 29 and 33).

The Respondent did not agree with the Complainant's three sales comparables and noted that one comparable was post facto, (R-1 page 38), the second was a court ordered sale (R-1 page 40), and the third was a restaurant with no offices involved. (R-1 page 45).

The Respondent advised the Board that the Complainant had not met the burden of proof. **It is up to the parties who file a complaint on an assessment to put sufficient energy into proving their allegations are well-founded. In other words, the onus is upon the complaining party to provide sufficient evidence to prove their case.** (Exhibit R-1 pages 6 and 7).

The Respondent advised Board that there were 17 different downtown districts and DT 8 was unique, where the subject property was located. (Exhibit R-1 page 17).

The Respondent provided the Board with an Assessment Request for Information dated April 21, 2011 for the subject property. (Exhibit R-1 21-25).

In support of the Respondent's position, the Respondent provided the Board with an example detailing the actual rents with the assessed capitalization rate of 7%. The market value of the subject property using actual income and a 7% capitalization rate would be \$8,525,000. In addition, the Respondent advised the Board that even using the Complainant's requested capitalization rate of 9%, and the actual median office rent, and actual retail rent, the valuation would be \$6,630,000. (Exhibit R-1 page 26).

The Respondent advised the Board of the Complainant's equity comparables showed a low of \$182 per square foot and noted the 2011 assessment per square foot for the comparables were substantially higher than the \$147 per square foot of the subject property. (Exhibit R-1 page 36). The subject property's 2011 assessment PSF is \$147 and the Complainant is requesting this to be reduced to \$114 PSF. The Respondent advised the Board that the Complainant provided no evidence to support the requested

\$114 PSF.

Upon questioning by the Complainant and the Board, the Respondent was not sure why the City of Calgary classifies the building predominantly retail, when the vast majority of the building is office.

The Respondent provided the Board with equity comparables for the Stephen Avenue Mall properties, in which all properties are assessed in 2010 and 2011 with a 7% capitalization rate. (Exhibit R-1 page 37).

The Respondent advised the Board that the subject property does not suffer from excess vacancy. (Exhibit R-1 page 21).

Board's Decision:

The decision of the Board is to confirm the 2011 assessment of \$5,550,000 as fair and equitable.

Reasons for the Board's Decision.

The Board has a degree of empathy with the Complainant regarding the predominant use as retail, when the majority of space is office. The subject property does not fit with the tenant's in the building. However, the Board's mandate is to determine market value. The question to be answered is whether or not the requested change in the capitalization rate causes the assessment of the subject property to be more representative of market value.

The sales evidence does not support a change in the cap rate. The actual rental rates being achieved in the subject property does not support a change in the capitalization rate to achieve market value.

The Complainant provided no sales evidence to show that the assessed value is incorrect.

The Complainant did not give sufficient evidence to persuade the Board to reduce the 2011 assessment from \$147 PSF to \$114 PSF. In addition, there were no sales to support the Complainant's request.

While the Board notes the issue is the capitalization rate, the Board is cognizant of the larger issue of market value of the subject property and as stated previously, there is no evidence to support the requested \$114 PSF.

DATED AT THE CITY OF CALGARY THIS 21st DAY OF OCTOBER 2011.


Robert Mowbrey
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1-48 pages	Complainant Disclosure
2. R1-54 pages	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.*