



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:

J. D. Hill Investments Ltd.
(as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

C. J. Griffin, PRESIDING OFFICER
D. Julien, BOARD MEMBER
G. Milne, BOARD MEMBER

This is a complaint to the Composite Assessment Review Board (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2013 Assessment Roll as follows:

ROLL NUMBER(S):	201358744
LOCATION ADDRESS:	1011 – 9 Ave. SE
FILE NUMBER:	72395
ASSESSMENT:	\$57,850,000.

This complaint was heard on the 3rd day of September, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, in Boardroom 4.

Appeared on behalf of the Complainant:

- D. Chabot

Appeared on behalf of the Respondent:

- M. Ryan

Board's Decision in Respect of Preliminary and/or Procedural Matters:

The Complainant indicated to the CARB that the issue pertaining to the assessed office rental rate is the same for this property as it is for several other properties also scheduled to be heard by this same Board in the ensuing days and therefore requested that all of the evidence and argument pertaining to same be carried forward and applied to those other Complaints. The Respondent agreed with this suggestion and, accordingly, the CARB will carry forward all of that evidence and argument to apply to those other properties, when appropriate, scheduled for this same Board this same week. Those files being: 72964 / 72959 / 72659 / 73145 / 72606 / 72488 / 72517 and 72949.

Property Description:

[1] According to the Property Assessment Detail Report (Exhibit C-1 pg. 20), the subject property is an A+ Class suburban office building containing a total assessed office area of 192,082 Sq. Ft. together with 322 underground parking stalls. While the total assessed area is 192,082 Sq. Ft., there is an exempt portion, which is not under Complaint, consisting of approximately 10,077 Sq. Ft. of space. The building, which was constructed in 2011, is a modern, four storey structure located in the Inglewood community of southeast Calgary.

Issue(s):

[2] The Complainant introduced two issues (Exhibit C-1 pg. 7) for the CARB's consideration and they consist of:

- The assessed office rental rate is in excess of market rent and a reduction is requested.
- There is incomplete and unoccupied office space in the building which has been assessed as being complete.

Current Assessment(s):

[3] \$ 57,850,000. (Net of Exempt portion)

Complainant's Requested Value:

[4] \$ 54,112,000. (Net of Exempt portion)

Board's Decision:

[5] The assessment is **reduced** to: \$ 57,075,000. (Net of the Exempt portion)

Position of the PartiesComplainant's Position:

[6] Referring to Issue No. 1, the assessed office rental rate, the Complainant presented (Exhibit C1 pg. 25) a summary chart of seven leases from the subject property that had commencement dates from August 2011 to June 2012 and totalling 128,682 Sq. Ft. The leased areas ranged from 6,625 Sq. Ft. to 47,830 Sq. Ft. and the lease rates ranged from a low of \$12.50/Sq. Ft. to \$24.50/Sq. Ft. with an indicated Mean (average) of \$19/Sq. Ft., a Weighted Mean of \$17.93/Sq. Ft. and a Median of \$20/Sq. Ft. Additionally the Complainant introduced (Exhibit C-1 pg. 26) their *SE A+ Lease Rate Study* which summarized fifteen leases, including the aforementioned seven leases from the subject property, all related to southeast located A+ suburban office buildings. The lease terms for these leases ranged from five to eleven years in length and the leased areas ranged from a low of 2,803 Sq. Ft. to a high of 47,830 Sq. Ft. The indicated lease rates ranged from a low of \$12.50/Sq. Ft. to a high of \$24.50/Sq. Ft. with an indicated Mean of \$20.10/Sq. Ft., a Weighted Mean of \$19.46/Sq. Ft. and a Median of \$20/Sq. Ft. The Complainant also provided (Exhibit C-1 pgs. 29 - 44) photographs of the properties referred to in the Lease Rate Study together with the Assessed Income Approach analysis of each property, as prepared by the Assessor. Based upon this evidence the Complainant requested the CARB reduce the assessed office rental rate from \$21/Sq. Ft. to \$20/Sq. Ft.

[7] Referring to Issue No. 2, the unfinished office space, the Complainant introduced (Exhibit C-1 pgs. 46 – 52) a copy of CARB Decision 1341/2012P which dealt with the same issue in the same property last year and which complaint was successful and resulted in a reduction to the assessed rental rate. The Complainant maintains that nothing, other than the area involved, has changed since that Complaint was heard and suggested that there is no reason for this CARB to make a different decision for this year. Additionally, the Complainant provided (Exhibit C-1 pgs. 53 – 65) photographs of the subject space together with a copy of the lease synopsis for the subject property indicating that the unfinished office space now consists of 12,139 Sq. Ft. (Exhibit C-1 pg. 65). A chart showing the values of the Tenant Improvement Allowances (TIs) per square foot granted to six tenants from the subject property (Exhibit C-1 pg. 61) which indicates a Median TI of \$5.25/Sq. Ft. The Complainant also introduced (Exhibit C-1 pgs. 62 – 72) a copy of CARB Decision 0931/2012-P which also deals with a similar issue in a similar A+ southeast located suburban office building and which resulted in a reduction in the assessed rate per Sq. Ft. as requested by the Complainant. The Complainant further submitted (Exhibit C-1 pgs. 73 – 79) a copy of a Court of Queen's Bench of Alberta decision #2005 ABQB 512, rendered by Madame Justice L.D. Acton (the Acton Decision) which states in paragraph 29 "*...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.*" The Complainant concluded their brief with two additional CARB Decisions (#1446/2011-P and #1539/2012-P) which also deal with a similar issue as that presented herein and which resulted in a reduction in the assessed rental rate(s) as requested by the Complainant. Based upon the foregoing the Complainant requests a reduction on the assessed rental rate for the 12,139 Sq. Ft. of unfinished office space to \$15/Sq. Ft. (Exhibit C-1 pg. 113).

Respondent's Position:

[8] Referring to Issue No. 1, the assessed office rental rate, the Respondent introduced (Exhibit R1 pg. 65) the *Calgary Assessment Revised 2013 Suburban Office Lease Analysis, A+ Quality in the SE* which summarizes seventeen leases, including the same seven examples

from the subject property as introduced by the Complainant, which indicates a Mean of \$20.31/Sq. Ft., a Weighted Mean of \$20.53/Sq. Ft. and a Median of \$21/Sq. Ft. all of which, the Respondent maintains, support the assessed rate of \$21/Sq. Ft.

[9] With regard to Issue No. 2, the alleged unfinished office space, the Respondent provides (Exhibit R-1 pgs. 70 - 72) a summary of the Assessor's opinion as to why the *Acton Decision* has been misinterpreted due to "capital improvements" being mistakenly referred to as "tenant improvements" (paragraph #7). The Assessor's position on shell space relative to market value is presented (Exhibit R-1 pgs. 72 - 75) in paragraphs 13 through 29 and which is concluded in paragraphs 30 through 34 of the same Exhibit. The assessor maintains, in paragraph 31 of the Exhibit, that "...the City is mandated to look at the fee simple market value of the property. Reduced (sic) for shell space explicitly represents the leased fee interest of the property." As further support for this position the Respondent introduced (Exhibit R-1 pgs. 83 -94) a copy of a 2006 decision from the Supreme Court of British Columbia (L050758) which, in part, deals with the assessment of vacant and unimproved space.

Complainant's Rebuttal

[10] With reference to the first issue, that of the assessed rental rate/Sq. Ft., the Complainant introduced (Exhibit C-2 pg. 102) a revised version of the Respondent's *2013 Suburban Office Rental Analysis: A+ Quality SE* which high-lights four of the properties included in same with comments as to why these should not be included in this study. The first of these is a property located at 4000 - 4th Street SE with an indicated rental rate of \$22.60/Sq. Ft. which, the Complainant maintains, is skewed by the fact that there was a 'free rent and/or rent abatement' period. The second property high-lighted is 815 MacDonald Ave. SE which the Complainant maintains is a house and not an office building. The third property, 15 Sunpark Pz. SE, refers to a retail store and not an office building. The fourth property is 7175 - 12 Street SE which shows an indicated lease rate of \$24.37/Sq. Ft. which, the Complainant maintains, stems from a lease-back arrangement not representative of a market rental rate and the indicated lease rate is for gross rent not net rent. The Complainant provides (Exhibit C-2 pgs. 103 - 121) support for their claims as to why these properties should not be included in the rental rate analysis. The Complainant then reproduced (Exhibit C-2 pg. 134) the aforementioned Rental Rate Analysis, with the four questionable properties removed, showing an indicated Mean of \$20.00/Sq. Ft., a Median of \$20.50/Sq. Ft. and a Weighted Mean of \$19.40/Sq. Ft. and this information, the Complainant contends, supports their request for a \$20/Sq. Ft. assessed office lease rate, as opposed to the assessed rate of \$21/Sq. Ft..

[11] Referring to the second issue, the incomplete or un-finished office space, the Complainant provided (Exhibit C-2 pg. 3) a copy of a *Property Assessment Explanation Summary* dealing with a property located at the Calgary International Airport and which clearly indicates that the Assessor has modified the assessment to account for 'raw undeveloped industrial space'. The aforementioned modification stems from a CARB Decision 2632-2011-P, a copy of which is provided (Exhibit C-2 pgs. 4 - 7). The Complainant also introduced (Exhibit C-2 pgs. 46 - 52) a copy of a recent CARB Decision 72564P-2013 which deals with a similar issue and in which the decision, quoting the *Acton Decision*, was awarded in favour of the Complainant. Additionally, the Complainant introduced (Exhibit C-2 pgs. 62 - 69) definitions of 'fixturing period' which relates to the time period when a tenant has access to the leased premise prior to the 'lease commencement date' to make improvements, install phone systems and/or other tenant improvements.

Board's Decision Reasons:

[12] Referring to the first issue, the assessed office rental rate, the Board is of the judgment that requesting a reduction from \$21/Sq. Ft. to \$20/Sq. Ft., equating to approximately 5%, is a request that requires a very finite analysis as opposed to the more general analyses provided by both parties. Additionally, there is case law that states, basically, that market value is a range as opposed to a specific value and that if one is within 5% then one has achieved market value. The CARB maintains that the referenced term 'market value' can be substituted with the term 'market rent' without altering the impact of the statement. Accordingly, the CARB has determined that the assessed office rental rate of \$21/Sq. Ft. is representative of 'market rent' and no reduction in the assessed value derived from this assessed rental rate is warranted.

[13] Referring to the second issue, the assessed value assigned to the incomplete, unfinished office space, the CARB does not agree with the Respondent and their contention that the *Acton Decision* has been misinterpreted. In the judgment of the CARB Madame Justice L. D. Acton's statement "...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" leaves no room for misinterpretation. It is a straight forward and simple statement which basically says that one cannot assess something that does not exist. Accordingly the CARB agrees with the Complainant that the assessed value of the subject property should be reduced to account for same by reducing the assessed rental rate for the 12,139 Sq. Ft. of unfinished space to \$15.75/Sq. Ft. A recalculation of the Income Approach utilizing this reduced rate results in a revised assessed value of \$57,075,000 truncated and net of the exempt portion.

DATED AT THE CITY OF CALGARY THIS 30th DAY OF September 2013.


C. J. Griffin

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
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 MGB Administrative Use Only

Municipality: Calgary	Decision No. 72395/P-2013	Roll No: 201358744	
<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
Office	Suburban Office	M.V.	Assessed office rental rate and Assessed rate applicable to unfinished office space.