



**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:**

***Stanley Waterman, Mary Waterman, Waterman Holdings Ltd., and Phyllis Rubin  
(represented by Altus Group), COMPLAINANT***

**and**

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

**before:**

***Ms. V. Higham, PRESIDING OFFICER  
Mr. J. Kerrison, BOARD MEMBER  
Mr. J. Massey, BOARD MEMBER***

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary (the City) and entered in the 2014 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>101030401</b>
<b>LOCATION ADDRESS:</b>	<b>5800 2 Street SW Calgary, Alberta</b>
<b>FILE NUMBER:</b>	<b>74513</b>
<b>ASSESSMENT:</b>	<b>\$2,420,000</b>

This complaint was heard on August 13, 2014 at the office of the Calgary Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta, 4<sup>th</sup> Floor, Boardroom 5.

Appeared on behalf of the Complainant:

- **Mr. B. Neeson**                      **Agent, Altus Group**

Appeared on behalf of the Respondent:

- **Mr. R. Tharakan**                      **Assessor, City of Calgary**
- **Mr. M. Ryan**                          **Assessor, City of Calgary**

**Procedural or Jurisdictional Matters:**

- [1] Neither party objected to the composition of the Board as introduced at the hearing.
- [2] The Board notes an executed Agent Authorization Form present in the file.
- [3] All disclosure materials were received in a timely fashion.
- [4] No preliminary issues were raised by either party.

**Property Description:**

[5] The subject is assessed as a B quality, low rise suburban office property (CS0302), located at 5800 2 Street SW on 0.28 acres of land. The parcel is improved by one building comprising 12,862 square feet (sf) of space, and is assessed on the income approach to value, with an applied rental rate of \$16 per square foot (psf), and a capitalization (cap) rate of 7% (not under complaint).

**Issues:**

[6] The Complainant identified one matter on the Complaint Form as under complaint, being the assessment amount. During the hearing, the Complainant requested a different assessment amount (\$2,090,000) than originally noted on the Complaint Form (\$2,000,000), and raised the following sole issue for the Board's consideration:

- 1) What is the appropriate rental rate psf to apply to the subject property: the assessed \$16 or the requested \$14?

**Complainant's Requested Value: \$2,090,000**

**Board's Decision:** The Board confirms the subject assessment at **\$2,420,000**.

**Legislative Authority, Requirements and Considerations:**

[7] A Composite Assessment Review Board (CARB) derives its authority from the *Act*, section 460.1, which reads as follows:

- (2) Subject to section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in section 460(5) that is shown on an assessment notice for property other than property described in subsection (1)(a).

Section 293 of the *Act* requires that:

- (1) In preparing an assessment, the assessor must, in a fair and equitable manner,
  - (a) apply the valuation and other standards set out in the regulations, and
  - (b) follow the procedures set out in the regulations.

Sections 2 and 4 of the *Matters Relating to Assessment and Taxation Regulations* (the *MRAT*) state:

- (2) An assessment of property based on market value
  - (a) must be prepared using mass appraisal,
  - (b) must be an estimate of the value of the fee simple estate in the property, and
  - (c) must reflect typical market conditions for properties similar to that property.
- 4(1) The valuation standard for a parcel of land is
  - (a) market value, or
  - (b) if the parcel is used for farming operations, agricultural use value.

**Position of the Parties**

**Issue #1: What is the appropriate rental rate psf to apply to the subject property: the assessed \$16 or the requested \$14?**

**Complainant's Position:**

[8] The Complainant submitted a rental study analysing eight leases of B quality properties (six within the subject building), with median/mean/weighted mean rates of \$14, \$13.92 and \$13.41 psf respectively, over a 12 month period dating back from the July 1, 2013 valuation date. The Complainant based his request of \$14 psf on the median of this analysis.

[9] The Complainant argued that since six of his eight lease comparables (comps) were drawn from the subject building, this comparatively smaller sample size represents the most accurate reflection of market value for the subject property.

[10] The Complainant further argued that the 13 lease comps in 5920 Macleod Trail used in the City's study are not acceptable comps, since properties on Macleod Trail pay a premium to operate on that commercially appealing corridor.

**Respondent's Position:**

[11] The Respondent submitted the City's rental study analysing 42 leases of B quality properties in the south east-and-west, with median/mean/weighted mean rates of \$16, \$15.80 and \$16.50 psf respectively, over a one year period dating back from the July 1, 2013 valuation date.

[12] The Respondent utilized five of the Complainant's six subject lease comps, noting that he was unable to locate one of the Complainant's lease comps on the subject's Assessment Request for Information (ARFI), and therefore, did not include that comp (\$12 psf lease in 4723 1 Street SW) in the City's study.

[13] The Respondent also submitted a map noting the location of each property used in the City's study relative to the subject, identifying a relatively tight geographic cluster surrounding the subject parcel.

[14] The Respondent argued that given its mandate to estimate typical market value using mass appraisal valuation factors, the City's study better reflects typical market value, since it includes a significantly larger sample of lease rates for similar properties in the city's south end.

[15] The Respondent also noted that the City's study included 13 leases from 5920 Macleod Trail (approximately one block south of the subject property), none of which were included in the Complainant's study.

[16] The Respondent also submitted CARB decision 72265/P-2013 which confirmed a complaint of the subject property last year requesting a reduced typical rental rate.

#### **BOARD'S FINDINGS AND REASONS:**

[17] The Board finds that the appropriate rental rate to apply to the subject is the assessed \$16 psf, based on the evidence submitted at the hearing.

[18] The Board excluded the Complainant's one comp challenged by the Respondent, (\$12 psf lease in 4723 1 Street SW), since it was not listed in the submitted ARFI, and since corroborating evidence was not submitted by the Complainant to verify its existence.

[19] Examining the Complainant's remaining five lease comps, the Board finds that the Complainant erred in requesting a rental rate variance based on a study of seven accepted comps, where six of these are *actual* lease rents in the subject property, while at the same time accepting the City's other *typical* income factors (cap and vacancy rate, operating costs, non-recoverables) derived from a sample range of similar properties.

[20] The Board in CARB 1169/2011-P reviewed a similar fact scenario in that case and concluded that:

The regulation is clear. In preparing an assessment in Alberta, an assessor must use mass appraisal, and ensure that the assessment so prepared reflects typical market conditions. The goal of the assessment process is an *estimate* (Board's italics) of the value of the fee simple estate in the property. "Typical market conditions" does not mean actual rental rates in a specific property. It means rental rates derived from a range of similar properties.

[21] The governing legal authority on the principle of not mixing actuals with typicals is a British Columbia Supreme Court decision, *Westcoast Transmission Co. v. Vancouver Assessor*, Area No. 9 [1987] B.C.J. No. 1273 (*Westcoast*), wherein was stated:

It is common ground that the income approach is an appropriate and, except in unusual circumstances, the most appropriate method of assessing the actual value of commercial property such as that under consideration here. ...

*For this process to work, it is evident that the appraiser must make some choices about the concepts to be used, and then to use them consistently. ...I stated above that the concepts used, in developing capitalisation rates for application to the subject, should be used consistently. [emphasis added]*

[22] While the justice in *Westcoast* referred to the development of cap rates, the same principles apply to the development of a typical rental rate, as well as all other income factors used in the income approach to derive mass appraisal assessments.

[23] The Complainant's requested typical rental rate is based almost exclusively on *actual* rents within the subject property, combined with the City's other *typical* income factors, violating the principle of consistency enunciated in *Westcoast*.

[24] While there may be times when it may be acceptable to derive a typical rental rate based solely on actuals within a certain property, those instances are exceptions to a general rule when similar comparable properties do not exist in the market for one reason or another. It is conceivable, for example, that a power shopping centre or massive commercial operation may "be the market" for that classification of properties in the city for that particular assessment year.

[25] In the subject hearing, however, the City's study analysed 42 properties over a one year period, persuading the Board that sufficient comparables exist, and ought to have been reviewed by the Complainant, to derive a typical rental rate.

[26] The Board therefore finds that the Complainant has not met the legislative test outlined in section 467(3) to warrant a variance to the assessed rental rate.

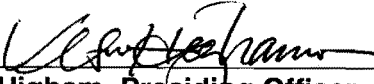
**Conclusion:**

[27] The Board is persuaded that on the facts and evidence submitted, the subject property is fairly and equitably assessed at the current \$16 psf rental rate.

**Board's Decision:**

[28] For reasons outlined herein, the Board confirms the subject assessment at **\$2,420,000**.

DATED AT THE CITY OF CALGARY THIS 19<sup>th</sup> DAY OF September 2014.

  
V. Higham, Presiding Officer

## APPENDIX "A"

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Disclosure
2. R1	Respondent's 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 Only – Roll Number 101030401**

<b>Municipal Government Board Use Only: Decision Identifier Codes</b>				
<b>Municipality/Appeal Type</b>	<b>Property Type</b>	<b>Property Sub-Type</b>	<b>Issue</b>	<b>Sub-Issue</b>
Calgary CARB	Office	Low Rise	Income	Net Market Rent/Lease Rate