



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:

**582276 Alberta Inc.
(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:

ROLL NUMBER: 156118804

**LOCATION ADDRESS: 279 Midpark Way SE
Calgary, Alberta**

FILE NUMBER: 74547

ASSESSMENT: \$7,780,000

This complaint was heard on August 12, 2014 at the office of the Calgary Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta, 4th 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 279 Midpark Way SE on 1.50 acres of land. The parcel is improved by one building comprising 34,345 square feet (sf) of space. The subject is assessed on the income approach to value, with an applied office rental rate of \$17 per square foot (psf), and a capitalization (cap) rate of 7% (not under complaint). Additionally, the parcel contains 36 enclosed parking stalls assessed at a rate of \$1,440 psf.

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 (\$7,240,000) than originally noted on the Complaint Form (\$7,000,000), and raised the following issues for the Board's consideration:

- 1) What is the appropriate office rental rate psf to apply to the subject property: the assessed \$17 or the requested \$16?
- 2) What is the appropriate parking rate per stall to apply to the subject property: the assessed \$1,440 or the requested \$1,260

Complainant's Requested Value: \$7,240,000

Board's Decision: The Board confirms the subject assessment at **\$7,780,000**.

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 office rental rate psf to apply to the subject property: the assessed \$17 or the requested \$16?

Complainant's Position:

[8] The Complainant submitted a rental study analysing five leases of B quality properties, all within the subject building, with median/mean/weighted mean rates of \$17, \$15.81 and \$16.31 psf respectively, over a 24 month period dating back from the July 1, 2013 valuation date. The Complainant based his request of \$16 psf on the general average of these three statistical values.

[9] The Complainant argued that in this case, the five leases within the subject constitute the best indicator of typical market conditions for the subject property as of the valuation date, July 1, 2013.

Respondent's Position:

[10] The Respondent submitted the City's rental study analysing 12 leases of B quality properties in the south east, with median/mean/weighted mean rates of \$17, \$16.46 and \$16.64 psf respectively, over a one year period dating back from the July 1, 2013 valuation date.

[11] The Respondent's leases were all drawn from properties in the immediate vicinity of the subject on Midpark Way or Boulevard, including two leases from the subject building at \$17 psf each.

[12] The Respondent excluded three of the Complainant's subject building leases, being outside the one year valuation period of the City's study dating back from July 1, 2013 (executed in June 2012, and two in August 2011), and included the Complainant's remaining two subject leases (executed January and February 2013).

[13] The Respondent objected to the Complainant's reliance solely on actual rental rates within the subject, with no evidence submitted relative to other similar properties to establish a typical value applicable to all properties within that category.

[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 for the subject, since it includes a sample of lease rates for similar properties in the subject's immediate vicinity.

[15] The Respondent also submitted several CARB decisions (CARB 1169/2011-P, CARB 2049-2012-P, CARB 70912P-2013, CARB 72040/P-2013, and CARB 0861/2010-P) to support his position that for assessment purposes, a typical rental rate is best derived by analysing a range of similar properties, rather than a limited sample of actual values.

Issue #2: What is the appropriate parking rate per stall to apply to the subject property: the assessed \$1,440 or the requested \$1,260?

Complainant's Position:

[16] The Complainant submitted a parking analysis comprising 13 leases of A, B, and C quality properties in the south-and-north east, with median/minimum/maximum rates of \$1,260, \$672 and \$2,196 per stall respectively. The Complainant based his request of \$1,260 per stall on the mean rate of the study's 13 comps.

[17] The Complainant argued that the Respondent's five Quarry Park parking comps should be excluded, since Quarry Park is an A+ quality development, sufficiently large and influential enough to warrant its own rental rate analysis in the City's 2014 typical studies. Therefore, including Quarry Park in the City's typical parking rate analysis is neither fair nor equitable to the subject, since Quarry Park rates drive the entire study upward.

Respondent's Position:

[18] The Respondent submitted the City's parking rate analysis comprising 28 leases for all properties in the city's south area (regardless of classification), with median/mean/weighted mean rates of \$1,586, \$1,488 and \$1,454 per stall respectively.

[19] The Respondent argued that the Complainant's study omitted 17 comparable leases, impacting the outcome of that study, and rendering the Complainant's study less representative of typical market value for the subject property.

[20] The Respondent also defended the City's inclusion of Quarry Park in the typical parking study, since their analysis revealed that for parking rate purposes, Quarry Park was not too different from many of the other comps in the study (unlike for the rental rate study, where Quarry Park rates were significantly different, warranting its own study).

BOARD'S FINDINGS AND REASONS:

[21] The Board finds that the appropriate office rental rate to apply to the subject is the assessed \$17 psf, and the appropriate parking rate to apply to the subject is the assessed \$1,440 per stall – thereby confirming the assessment.

Office Rental Rate – Actuals versus Typical:

[22] The Board finds that the Complainant erred in requesting a rental rate variance based on nothing but *actual* lease rents obtained from 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.

[23] 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.

[24] 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]

[25] 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.

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

[27] 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.

[28] In the subject hearing, however, the City's study analysed 12 properties over a one year period, persuading the Board that sufficient comparables exist, and ought to have been reviewed, to derive the typical rental rate.

Parking Rate:

[29] The Board carefully examined the parking studies of both parties and concluded that the Complainant lacked sufficient compelling evidence to warrant varying the assessed rate.

[30] The Complainant's own study supports the City's assessed \$1,440 per stall rate, if relying on the mean of the Complainant's 13 comps at \$1,418 per stall. The Complainant's request is based on the lower median value in this case at \$1,260 per stall.

[31] To further satisfy ourselves that the subject's parking rate is fair and equitable, the Board examined each parking rate comp in both studies, and excluded ones which the Board considered less comparable owing to distance from the subject (a number of comps in both studies were significantly distant from the subject, including two in the north east), or because of other economic factors (the five Quarry Park comps operate in a different and somewhat unique economic reality compared to the subject property).

[32] The Board was left with eight solid parking comps, five of which were common to both studies (14505 Bannister Road SE, 51 Sunpark Drive SE, 23 Sunpark Drive SE, and two in 15 Sunpark Plaza SE), and three additional City comps (60 Sunpark Plaza SE, 10101 Southport Road SW, and 10655 Southport Road SW). The median/mean rates of these eight comps are \$2,038 and \$1,698 per stall respectively.

[33] Thus, the Board finds no reason to vary the subject parking rate.

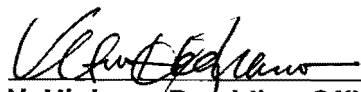
Conclusion:

[34] The Board is persuaded that on the facts and evidence submitted, the subject property is fairly and equitably assessed at the current \$17 office rate and \$1,440 per stall parking rate.

Board's Decision:

[35] For reasons outlined herein, the Board confirms the subject assessment at **\$7,780,000**.

DATED AT THE CITY OF CALGARY THIS 16th DAY OF September 2014.


V. Higham, Presiding Officer

APPENDIX "A"

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

NO.	ITEM
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 156118804

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