



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:

***Vista Heights Management Limited., (as represented by Altus Group Limited),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, T. Hudson PRESIDING OFFICER
BOARD MEMBER, J. Pratt
BOARD MEMBER, E. Reuther***

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 2014 Assessment Roll as follows:

ROLL NUMBER: 048039002

LOCATION ADDRESS: 1925 18 AV NE

FILE NUMBER: 74634

ASSESSMENT: \$54,810,000

This complaint was heard on the 25th day of June, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Board room 5.

Appeared on behalf of the Complainant:

- *Mr. M. Cameron, Agent, Altus Group Limited*

Appeared on behalf of the Respondent:

- *Ms. C. MacMillan, Assessor City of Calgary*
- *Mr. M. Ryan, Assessor City of Calgary*

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

[1] There were no procedural or jurisdictional matters in dispute between the Parties.

Property Description:

[2] The subject property is a 4.47 acre parcel of commercial land located at 1925 18 AV NE. The property was improved in 2004 and 2009 with two "A+" quality low rise office buildings incorporating 188,706 square feet (sf.) of net rentable office area, and 5,413 sf. of recreation area. There is also a 271 stall enclosed parking structure on the parcel.

[3] The property is currently assessed based on capitalized income.

[4] Details of the assessment include the office rental rate of \$19.00 per square foot (psf.), recreation area rental rate of \$10.00 psf., vacancy rate of 9% for office and recreation areas, \$13.50 psf. operating cost allowance, a 1% non-recoverable expense allowance, an assessed rate of \$1,080 per stall, and vacancy rate of 2% for parking, and a capitalization (cap) rate of 6.00%.

[5] The total assessed value is \$55,449,483, which includes related value of \$629,500 which is exempt from taxation.

[6] The value subject to complaint is therefore \$54,810,000 (rounded).

Issues:

Vacancy Allowance

[7] The Complainant contends that the assessed vacancy allowance for office space should be increased to 12% from 9%, and for recreation space to 11% from 9%.

Market Value

[8] The Complainant contends that the June 27, 2013 sale of the subject property for \$52,830,000 is the best evidence that current assessment exceeds market value.

Complainant Requested Value: \$51,760,000,000 (rounded), or the June 27, 2013 sale price of the subject property of \$52,830,000.

Board's Decision:

[9] The assessment of the subject property is confirmed at **\$54,810,000 (rounded).**

Legislative Authority, Requirements and Considerations:

[10] The Composite Assessment Review Board (CARB) derives its authority from Part 11 of the Municipal Government Act (MGA) RSA 2000:

Section 460.1(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).

[11] For purposes of the hearing, the CARB will consider MGA Section 293(1):

In preparing the 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.*

[12] The Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in MGA section 293(1) (b). The CARB consideration will be guided by MRAT Part 1 Standards of Assessment, Mass appraisal section 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.*

Position of the Parties**Vacancy Allowance****Complainant**

[13] The Complainant argued that the typical assessed vacancy allowance of 9% applied to "A" quality class NE suburban office properties including the subject is incorrect.

[14] The Complainant suggested that owner occupied or single occupant properties in the Respondent's vacancy rate analysis should be excluded, because these properties do not compete for tenants and therefore have no available vacancy.

[15] The Complainant submitted charts to demonstrate the effect that inclusion or removal of these occupancies has when determining typical vacancy.

[16] The first chart, (Exhibit C1, page 29), lists 27 "A" quality class NE suburban office properties and their percentage of vacancy, with the resulting average of 8.59%. The chart also identifies the 8 properties the Complainant wants removed from the analysis, because they are single occupant, or owner occupied.

[17] The second chart, (Exhibit C1, page 30), excludes the single occupant and owner occupied properties and results in an average vacancy rate of 11.73%.

[18] The actual vacancy experienced to July 1, 2013 by the subject property was 11.14% which the Complainant contends justifies their request to increase the 2014 assessed vacancy rates to 12% for office space and 11% for the recreation space, (Exhibit C, page 31).

Market Value

[19] The Complainant submitted the sale of the subject on June 27, 2013 for \$52,830,000 as further evidence that the current assessment exceeds market value, (Exhibit C1, pages 33-35).

[20] The Complainant suggested that Citation: 697604 Alberta Limited v. Calgary (City of), 2005 ABQB 512, and known as the Acton decision, was important case law with respect to establishing market value based on the sale of the subject near the date of valuation, *"is in law and, in common sense, the most realistic and most reliable method of establishing market value"*, (see page 5, [24] of the decision).

[21] In rebuttal to the Respondent position on the sale, the Complainant submitted the Assessment Request for Information, (ARFI) on the sale received by the City of Calgary on September 19, 2013.

[22] The ARFI is signed by the President of the purchaser, (i.e. Vista Heights Management Limited), and takes the position that the transaction was arms-length, and not affected by related parties or any other conditions, (Exhibit C1, pages 36-39).

Respondent

Vacancy Allowance

[23] The Respondent argued that because a property is occupied by an owner or a single occupant, is not a valid reason to exclude it from the analysis to determine typical vacancy for "A" quality class suburban office buildings in the NE quadrant. The owner or single occupant is just avoiding the need to occupy space and pay rent elsewhere.

[24] In support, the Respondent submitted the opinion of the CARB 71072P-2013 in a decision on the same issue that *"all the offices in the NE compete in a similar market and therefore the City study was given more weight as it contained more comparables to develop a typical rate"*, (Exhibit R1, pages 153-157).

[25] The Respondent also submitted the 2013 ARFI, which indicates that most of the actual rental rates exceed the assessed rate and therefore effective net income of the subject property does not appear to be affected by the higher than assessed vacancy experience, (Exhibit R1, pages 29-39).

Market Value

[26] With respect to the sale of the subject property, the Respondent argued that the transaction was non-arms-length between related parties. The Acton decision dealt with an arms-length transaction between unrelated parties, and therefore does not apply to the sale of the subject.

[27] In support the Respondent pointed to the Real Net and Commercial Edge reports on the sale and both indicate the transaction involved a non-arms length sale between affiliated parties. (Exhibit R1 pages 72-75).

[28] The Respondent also noted that the ARFI report on the sale left key questions unanswered, including whether the sale was exposed to the market through a broker.


Board's Reasons for Decision:

[29] The Board was not convinced by the Complainant, that their assessment request reflects the 2014 market value of the subject property.

[30] The Respondent provided evidence, in the 2013 ARFI, that the higher actual vacancy versus assessed vacancy does not appear to have a negative impact on the market value of the subject property.

[31] The Board is of the opinion that there is insufficient evidence to conclude that the sale of the subject was an arms-length transaction between unrelated parties. In addition, the sale was not exposed to the open market. The purchase price is therefore not considered to be the best indicator of market value.

DATED AT THE CITY OF CALGARY THIS 25th DAY OF July 2014.



T. B. Hudson

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. 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.*

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<i>Decision No. 74634P-2014</i>			<i>Roll No 048039002</i>	
<u>Subject</u>	<u>Type</u>	<u>Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Office	Multi Building Complex	Market Value and Equity	Vacancy Rate