



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:

***RIBTOR EAST LTD.,
(represented by Altus Group), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***M. CHILIBECK, PRESIDING OFFICER
D. MORICE, BOARD MEMBER
R. KODAK, BOARD 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 2014 Assessment Roll as follows:

ROLL NUMBER: 200206910

LOCATION ADDRESS: 334 – 11 AV SE

FILE NUMBER: 75063

ASSESSMENT: \$17,200,000. (Taxable Portion)

This complaint was heard by the Composite Assessment Review Board (Board) on 21st day of July, 2014 in Boardroom 3 on Floor Number 4 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- *D. Chabot, Agent of Altus Group*

Appeared on behalf of the Respondent:

- *L. Wong, Property Assessor of the City of Calgary*

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

[1] Neither party raised any objections to any member of the Board hearing the subject complaint.

[2] Neither party raised any procedural or jurisdictional matters.

Preliminary Matter:

[3] Neither party raised any preliminary matter(s).

Property Description:

[4] The subject property is a developed parcel of commercial land with 19,500 square feet (sq. ft.), designated Centre City Mixed Use and improved with one, Class A, four storey office building with 49,844 sq. ft. constructed in 2008. The subject property has five surface and 74 underground parking stalls.

[5] The subject is located at the northwest corner of 11 AV and 3 ST in beltline district four (BL4) located in the southeast quadrant of the City of Calgary.

Issues:

[6] The Complainant identified the matter of the assessment amount under complaint on the complaint form and attached a schedule listing several reasons (grounds) for the complaint. At the outset of the hearing the Complainant identified the following issues:

1. The typical rental rate should be reduced from \$24 to \$22 per sq. ft. of office area.
2. The typical vacancy rate should be increased from 11 to 17 %.
3. The assessment should be reduced to reflect the damage from the June, 2013 flood.

Complainant's Requested Value: \$13,740,000.

Complainant's Revised Value at the Hearing: \$13,860,000

Board's Decision:

[7] The Board changed the assessment to **\$16,670,000**.

Legislative Authority, Requirements and Considerations:

[8] The Composite Assessment Review Board (CARB) derives its authority from Part 11 of the Act:

S.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).

[9] For purposes of the hearing, the CARB will consider Part 9, Division 1 of the Act:

S.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

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

S.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

(c) must reflect typical market conditions for properties similar to that property

Assessment Background:

[11] The subject property is assessed by the capitalized income method using a rental rate of \$24 per sq. ft., vacancy rate of 11% and a capitalization rate of 5.5%. The surface parking stalls are assessed at \$1,980 each and the underground parking stalls are assessed at \$2,580 each.

[12] The subject property has 49,844 sq. ft. of building area, five surface parking stalls and 74 underground parking stalls assessed at \$21,410,545.

[13] The subject property has an exempt portion of 10,610 sq. ft. and nine underground parking stalls assessed at \$4,210,000 (19.66% of total assessment).

[14] The taxable portion, under complaint in this case, of 39,234 sq. ft., 65 underground parking stalls and five surface parking stalls is assessed at \$17,200,000.

Position of the Parties

1. Rental Rate

Complainant's Position:

[15] The Complainant provided eight lease rate comparables in the beltline district (C1P57) which have a range of lease rates from \$18 to \$25.15 per sq. ft. and lease commencement dates which range from 02/16/2012 to 09/01/2012 with a weighted average of \$22.11 per sq. ft. in support for their request of \$22 per sq. ft.

[16] In rebuttal, the Complainant argued that three of the Respondent's lease comparables should be eliminated from the analysis because 402-11 AV SE and 318-11 AV SE are Class B buildings and 140-10 AV SE is a Class AA building; these comparables are not similar to the subject with a Class A building.

[17] The Complainant argued the eight remaining comparables with a weighted average of \$21.68 supports their request of \$22 per sq. ft.

Respondent's Position:

[18] The Respondent provided eleven lease rate comparables in the beltline district (R1P47) which have a range of lease rates from \$13 to \$26.90 per sq. ft. and lease commencement dates which range from 08/01/2012 to 07/01/2013 with a weighted mean/average of \$24.16 per sq. ft. in support for their assessed rate of \$24 per sq. ft.

[19] The Respondent argued that two of the Complainant's comparables at 1550-8 ST SW should not be used because the building was renovated subsequent to the lease start dates. When these comparables are removed from the analysis, the weighted average is closer to \$23, not \$22 per sq. ft.

Board's Reasons for Decision

[20] The Board finds when the two comparables are removed from the Complainant's analysis as argued by the Respondent, the remaining comparables show an obvious upward trend approaching the valuation date of July 1, 2013 and support the assessed rate of \$24 per sq. ft.

[21] The Board accepts the Complainant's contention of removing three of the Respondent's comparables because they are not in the same class as the subject property.

[22] Also, the Board finds that five of the seven lease rate comparables from the Respondent at 525-11 AV SW, with a lease start date of 01/09/2013, should be eliminated because of the significantly lower lease rates. The five comparables have a lease rate range from \$13 to \$17 per sq. ft. versus the other two comparables with a start date of 05 & 07/01/2013 at \$21.11 and \$25.15 per sq. ft.

[23] The remaining three comparables, which are in common with the Complainant and Respondent, have lease rates of \$23.50, \$21.11 and \$25.15 per sq. ft. which the Board finds supports the assessed rate of \$24 per sq. ft.

[24] The Board notes the conflict between the Complainant and the Respondent wherein only three comparables are common to both parties and therefore looked at the subject's rent roll (R1P25) and finds that the lease rates range from \$25.50 to \$27.50 per sq. ft. with the most recent lease commencement date of August, 2013 at \$27 per sq. ft.

[25] The Board is aware that a typical rental rate is one of several factors used in deriving a capitalization rate and in this case no consideration was given by the Complainant to re-analyse the capitalization rate by utilizing the requested \$22 per sq. ft. rental rate. The Board finds this is a flaw in the Complaint's approach in this complaint.

[26] Based on the foregoing explanation, the Board is not persuaded to change the assessed rental rate of \$24 per sq. ft. to the requested rate of \$22 per sq. ft.

2. Vacancy rate

Complainant's Position

[27] The Complainant provided a vacancy analysis of 12 property comparables in support of their request to increase the typical vacancy rate from 11 to 17%. Of the 12 properties, four have vacancy rates which range from 8 to 32.83%, the remaining eight properties have a 0% vacancy.

[28] The total office area for the twelve properties is 446,363 sq. ft. and the total vacant area is 77,501 sq. ft. for a vacancy rate of 17.36%.

[29] The Complainant asserted that one property, 326-11 AV SW, with a significant vacancy of 32.83% was not used by the Respondent in their vacancy analysis. With the inclusion of this property in the Respondent's analysis, the vacancy rate would be approximately 17%.

[30] In rebuttal, the Complainant argued that five of the Respondent's properties should be excluded from their analysis as follows;

- 1232-11 AV SW is a Class B building
- 132-11 AV SE is not a typical Class A building – year built 1913 and renovated
- 318-11 AV SE is not a typical Class A building – year built 1914 and renovated
- 402-11 AV SE is not a typical Class A building – year built 1913 and renovated
- 2219-4 ST SW is included two times.

Respondent's Position

[31] The Respondent provided a vacancy analysis of 16 comparable properties in support of their assessed vacancy rate of 11%. Of the 16 properties, four have a vacancy rate which ranges from 0.05 to 66.47%, the remaining 12 properties have a 0% vacancy.

[32] The total office area for the twelve properties is 444,290 sq. ft. and the total vacant area is 51,025 sq. ft. for a calculated vacancy rate of 11.49%.

[33] The Respondent argued that 880-16 AV SW was not included in their study because it was being renovated and should be excluded from the Complainant's analysis.

[34] The Respondent stated that the property at 326-11 AV SW was not included in their study because no response was received to their Assessment Request for Information (ARFI).

Board's Reasons for Decision

[35] The Board finds that the only evidence from the Complainant to support the inclusion of 326-11 AV SW with a vacancy rate of 32.83% in the vacancy analysis is the letter from the Regional Director wherein it states that 60,052 sq. ft. of the total building area of 216,584 sq. ft. is vacant. Subsequently the Director advised that the vacant area is "all office" area and the Complainant asserted that the building contains 182,940 sq. ft. of office area.

[36] The Board is not persuaded to accept the Complainant's assertion regarding the building area without evidence such as an Assessment Explanation Supplement and regarding the vacant area without evidence such as a rent roll.

[37] The Respondent supplied a copy of the ARFI form for 326-11 AV SW together with copies of three letters, each of which were sent on three different dates requesting rental information, which were not completed and returned to the Respondent. The Board finds that it is unreasonable to include information in the Respondent's analysis when they are not aware in a timely manner and as in this case no response was received despite having sent three letters requesting rental information. However, the Respondent did state that if they had been aware of the significant vacancy they would have included it in their analysis.

[38] The Board finds the ARFI form, which lists the tenants with their respective leased area, does not show the total area of the building, the breakdown between office area and other area and the vacant area. The Complainant identified one tenant, Schlumberger, with a total area of 52,837 sq. ft. whose three year lease commenced on 2010/05/01 and did not renew the lease. The Board finds that, without a copy of the 2013 rent roll, the Complainant's assertion regarding the vacant areas is hearsay at best.

[39] The Board is aware that a typical vacancy rate is one of several factors used in deriving a capitalization rate and in this case no consideration was given by the Complainant to re-analyse the capitalization rate by including the requested 17% vacancy factor. The Board finds this is a flaw in the Complaint's approach in this complaint.

[40] The Board notes that the subject property has a 0% vacancy as reported on the ARFI's dated April 10, 2013 (R1P19) and May 9, 2014 (R1P24). This evidence persuaded the Board that the assessed vacancy rate of 11% for the subject property is fair and reasonable.

3. Flood Damage

Complainant's Position

[41] The Complainant argued that the subject property should receive a negative adjustment to reflect the severe damage caused by the June, 2013 flood. Letters from the subject's property manager together with remediation costs of \$603,658 and cost breakdown and rent loss of \$53,239 were provided in evidence. The Complainant argued that the total of the remediation cost and the rent loss (\$656,897) should be deducted from the valuation of the property.

[42] The Complainant provided a 2014 Assessment Explanation Supplement for the comparable property at 1313-1 ST SE which shows the Respondent gave a flood damage adjustment of approximately 3%.

[43] Also, the Complainant provided residential property comparables showing that an adjustment was given for flood damage.

Respondent's Position

[44] The Respondent argued that a flood damage adjustment is given based on an inspection of a flood damaged property. The inspection is carried out upon building permits taken out to repair the damage. A copy of an inspection report was provided for 1313-1 ST SE to support the Respondent's process of inspecting flooded commercial property.

[45] There were three electrical permits for \$5,000 each issued for the subject property, which were considered minor and therefore resulted in no inspection of the subject. No permit information was provided for the property at 1313-1 ST SE.

[46] The Respondent advised that an adjustment is given to flooded commercial property by recognizing the rental loss and the amount of the physical damage.

[47] The Respondent asserted that flood damage adjustment to residential property is given in a different manner than for commercial property and therefore the use of residential comparisons in this case is not reasonable.

Board's Reasons for Decision

[48] The Board is persuaded by the Complainant's evidence that the subject suffered rental loss and physical damage. The letter from the property owner describes the nature of the damage and the breakdown of the cost (\$603,657) to repair the damage is enumerated on a line item basis. The Board notes some of the repairs undertaken, such as elevator repairs, drywall replacement water extraction, etc. (C1P17).

[49] The Board also finds the subject property as a whole should receive an adjustment of \$656,897 to the 2014 assessment based on the Respondent's evidence and testimony that similar properties have been given for flood damage and as demonstrated by the one comparable at 1313-1 ST SE. This is also supported by the Respondent's assertion that an adjustment could be given for the 2015 assessment.

Decision Summary

[50] The Board's decision is to change the assessment by granting a flood damage adjustment of \$656,897. This amount is deducted from the assessment of the whole property (taxable and exempt portions) and the exempt portion subtracted at 19.66% (as agreed to by both parties).

[51] Neither party provided the detailed calculations for the exempt portion of the assessment; the 19.66% was calculated by the Complainant using the Respondent's 2014 assessments for the taxable and exempt portions (C1aP9).

[52] The Board's decision is to change the taxable assessment to \$16,670,000.

DATED AT THE CITY OF CALGARY THIS 21 DAY OF AUGUST 2014.

A handwritten signature in black ink, appearing to read 'M. Chilibeck', written over a horizontal line.

M. CHILIBECK

Presiding Officer

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

NO.	ITEM
1. C1a	Complainant's Disclosure
2. C1b	Complainant's Disclosure
3. R1	Respondent's Disclosure
4. C2	Complainant's Rebuttal

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.*

CARB Identifier Codes

Decision No. 75063P-2014			Roll No. 200206910	
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Office	Low-rise	Income Method	Rent rate, Vacancy, Flood damage

FOR MGB ADMINISTRATIVE USE ONLY