



DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***Cominar MVBC Inc., COMPLAINANT
(as represented by Altus Group)***

and

The City Of Calgary, RESPONDENT

before:

***I. Weleschuk, PRESIDING OFFICER
P. Cross, BOARD MEMBER
A. Maciag, 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:	201578762
LOCATION ADDRESS:	200 4000 4 St SE
FILE NUMBER:	75364
ASSESSMENT:	\$14,200,000

This complaint was heard on 19th day of August, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 5.

Appeared on behalf of the Complainant:

- *B. Neeson, Agent – Altus Group*

Appeared on behalf of the Respondent:

- *M. Ryan, Assessor – City of Calgary*
- *K. Mulenga, Assessor – City of Calgary*

Procedural or Jurisdictional Matters:

[1] Neither party objected to the Board as constituted to hear and decide on this matter.

Property Description:

[2] The subject is a two storey low-rise office building located at 200 4000 4 St SE, Manchester Industrial District. The subject area consists of a mix of industrial, retail and office properties. The property is 1.56 acres in size, with a total of 50,997 square feet (SF) of assessable area. The building was constructed in 2008 and is assigned an A+ Quality rating for assessment purposes. The property is zoned Industrial Business (I-B) District. This property is part of a larger holding of individually titled parcels that includes two other similar office buildings.

[3] The 2014 property assessment is calculated using the Income Approach. The net operating income (NOI) of \$852,217 is divided by the capitalization rate of 6.00%, resulting in an assessment of \$14,200,000 (truncated). The specific factors used to prepare the assessment for this A+ Quality low-rise SE office property are presented in the table below.

Sub-components	Area	Rental Rate (\$)	Vacancy Rate %	Operating Cost (\$/SF)	Non-Recoverable %
Office (southwest)	38,928 SF	22.00/SF	2.00	13.50	1.00
Storage	12,071 SF	3.00/SF	2.00	13.50	1.00

Issues:

- [4] The Complainant stated that the 2014 Assessment is incorrect for the following reasons:
- The subject property suffers from chronic vacancy, therefore the vacancy rate should be increased to recognize the subject's vacancy
 - In the alternative, the typical vacancy rate used to prepare the 2014 Assessment is not correct. The correct typical vacancy is 4%.

Complainant's Requested Value: **\$11,840,000 based on chronic vacancy**

Board's Decision:

- [5] The 2014 Property Assessment is confirmed at \$14,200,000.

Legislative Authority, Requirements and Considerations:

[6] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as "the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer." Section 467(3) of the Act states that "an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations". The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[7] The Board notes that the words "fair" and "equitable" are not defined in the Act or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard applied to all properties in that property category.

Issue 1: Does the subject property suffer from chronic vacancy? What is the typical vacancy rate for this A Quality Suburban SE Offices?

Complainant's Position:

[8] The Complainant presented evidence regarding the vacancy of the subject property. The vacancy rate based on the 2013 Assessment Request for Information (ARFI), likely provided in the spring of 2013, is 16.88% as shown in the City's 2014 SE A Suburban Office Vacancy Analysis (page 20, Exhibit C1). A rent roll (page 22-23, Exhibit C1) dated March 10, 2012 indicates a vacancy of 6.11%. A rent roll dated December 31, 2011 (page 23-24, Exhibit C1) indicates a vacancy rate of 11%.

[9] The Complainant introduced a number of previous Board decisions in Exhibit C1 to support the position that generally if a property has three years of above typical vacancy, it is considered to have chronic vacancy and is therefore a candidate to have a much higher vacancy rate than typical used to calculate the assessment.

[10] The Complainant stated that its evidence demonstrates that the subject vacancy exceeds the typical vacancy used by the City to prepare its assessments for the last three years. The Complainant stated that the property was being actively marketed and is under good management, therefore the chronic vacancy is a function of an oversupply of office space in the market. The median vacancy over the last three years is 11%, therefore the Complainant requested that the assessed value be calculated using a vacancy of 11% rather than the 2% typical vacancy used.

[11] The Complainant also presented the City's 2014 Suburban Office Vacancy Study: Southeast A Quality (page 27-28, Exhibit C1) and noted that this study includes nine large properties located in the Quarry Park District. The Complainant argued that the City assesses Quarry Park as a separate economic district, and presented other income factors that have a separate rate for Quarry Park. Furthermore, the use of the nine Quarry Park properties (all at 0% vacancy) in the vacancy study biases the result. If the Quarry Park properties are not included in the analysis, the Complainant demonstrated that the typical vacancy rate for SE A Suburban Offices is 3.85%, supporting the requested typical rate of 4% (page 20, Exhibit C1). The Complainant presented a requested assessment of \$13,670,000 (page 43, Exhibit C1) in the alternative that the Board finds that the property does not suffer from chronic vacancy, based on a typical vacancy being 4%.

Respondent's Position:

[12] The Respondent took the position that the vacancy is due to normal turnover of tenants in this type of property. The Respondent presented a leasing advertisement taken from the Avison Young website on March 24, 2014 showing only 957 SF of vacancy in the campus (three buildings including the subject under common ownership), or 2.12% (page 22-24, Exhibit R1). An ARFI dated March 21, 2013 indicates 7,622 SF of vacant space, or 16.88 % (page 31-36, Exhibit R1) but only 5,044 SF is identified in the supporting pages. An ARFI dated April 10, 2012 shows 0% vacancy (page 37, Exhibit R1) although the attached rent roll (page 40, Exhibit R1) shows 2,578 SF of vacant space, or 6.11%.

[13] The Respondent stated that there is no reason for the property to be experiencing chronic vacancy. The building is relatively new, has good access and is located in an area that is redeveloping with a predominant use being general industrial, including a mix of office, warehouse and retail. The Respondent also noted that the other two buildings owned by the same party and part of the "campus" show 0% vacancy.

[14] The Respondent stated that the Quarry Park properties were included in the vacancy study because there is 0% vacancy in Quarry Park, as it is a new development with leases in place prior to the completion of construction. With regard to vacancy, the Quarry Park properties function like other A Quality Suburban Offices in the SE. For other factors such as rent, the data shows that the Quarry Park properties are different than typical A Quality Suburban SE Offices, so rent rates are different. The determination of what areas are included in the calculation of an income factor is based on the market data.

Findings of the Board on this Issue:

[15] The Board notes that the vacancy evidence presented by the Complainant is for a period from December 31, 2011 to the spring of 2013 (2013 ARFI). This does not constitute a three year period prior to the July 1, 2013 valuation date. Therefore, the argument that three years of above typical vacancy triggers a chronic vacancy adjustment does not apply.

[16] The Board referred to the March 10, 2012 rent roll presented on page 40, Exhibit R1, and noted that the vacancy appears to be primarily the basement area in the subject property, which is assessed as "storage" space. Including this storage area in the vacancy calculation for the subject property results in overstating the actual vacancy of the "office" space. Neither party inspected the basement area so could not describe the nature, character or function of this space.

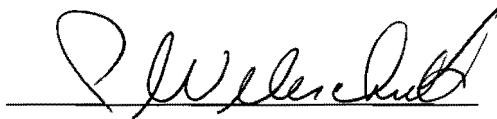
[17] The Board finds that the subject property does not suffer from chronic vacancy. The higher than typical vacancy is due to the inclusion of the storage space in the vacancy calculation. For the same reason, the Board finds that the vacancy in the subject building is typical, and that the property experiences normal fluctuations in vacancy as a result of tenant movement.

[18] The Board is not persuaded that the typical vacancy for this building class is not 2%. Different income factors are calculated or derived using different groupings of data. The Complainant did not persuade the Board that the Quarry Park properties should be excluded from the vacancy study used by the City to derive its 2% vacancy rate.

Board's Reasons for Decision:

The 2014 Property Assessment of 14,200,000 is confirmed. The Board did not find that the subject property suffers from chronic vacancy. The Board is not persuaded that the typical vacancy rate for this building type is not 2%.

DATED AT THE CITY OF CALGARY THIS 3rd DAY OF September 2014.



I. Weleschuk

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
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.*

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Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Suburban Office	A Quality SE	Vacancy	Chronic vacancy