



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:

***17 Avenue Equities Ltd.
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Dawson, PRESIDING OFFICER
R. Roy, BOARD MEMBER
T. Livermore, BOARD MEMBER***

This is a complaint to the Composite Assessment Review Board [CARB or the 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:	080009608
LOCATION ADDRESS:	1029 17 AV SW
FILE NUMBER:	76689
ASSESSMENT:	\$4,940,000

This complaint was heard on 30th day of June, 2014 at the office of the Calgary Assessment Review Board [ARB] located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *D. Chabot* *Agent, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *H. Yau* *Assessor, City of Calgary*

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

- [1] There are no preliminary, procedural, or jurisdictional issues.

Property Description:

- [2] The subject is a 14,092 square foot commercial building in the Beltline (BL6) Non-Residential Zone [NRZ]. Built in 1973 it is graded as a 'C' class low-rise office building. The property is assessed using the Income Approach to Value with twenty (20) parking stalls, 3,256 square feet of retail space below grade, 6,841 square feet of office space, and 3,994 square feet of bank space.

Issues:

- [3] The single issue before the Board is the 3,994 square feet of assessed bank space. The Complainant is asking for the space to be categorised as retail space because the bank vacated the space prior to December 31, 2013.

Complainant's Requested Value: \$3,660,000

Board's Decision:

- [4] The Board found the 3,994 square foot space on the main level to hold the characteristics of retail space and lowered the assessment to \$3,660,000.

Legislative Authority, Requirements, and Considerations:

The Municipal Government Act

Revised Statutes of Alberta 2000 Chapter M-26

Interpretation

1(1) In this Act,

- (n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Assessments for property other than linear property

289(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

Rules for assessing improvements

291(1) Unless subsection (2) applies, an assessment must be prepared for an improvement whether or not it is complete or capable of being used for its intended purpose.

Matters Relating to Assessment and Taxation Regulation

Alberta Regulation 220/2004 with amendments up to and including Alberta Regulation 184/2012

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Guide to property assessment and taxation in Alberta

Government of Alberta – Municipal Affairs publication, chapter 3 pp. 18-19

Valuation and condition dates

In Alberta, there are two key legislated dates by which certain assessment processes must be complete—the valuation date and condition date.

The valuation date is a fixed point in time at which assessment values are based. The valuation date ensures that all properties in a municipality are valued as of the same date. The valuation date set by the Municipal Government Act is July 1. For example, for the 2010 tax year, the valuation date for property assessment is July 1, 2009. This means that a 2010 property assessment must reflect the value of the property as of July 1, 2009.

The second legislated date in the valuation process is the condition date. The condition date is the date on which the condition of the property is recorded for property assessment purposes. Under Alberta legislation, the condition date for property other than linear property is December 31. For example, for the 2010 tax year, the condition date would be December 31, 2009. This means that although the value of the property reflects the market conditions as of July 1, it must also reflect the condition of the property as of December 31.

For example, if a garage has been added to the property during 2009, the property assessment for 2010 would be based on its market value as of July 1, 2009, and would include the garage as if it existed on July 1. The 2009 property assessment would not have included the garage because the garage was not built by the condition date (December 31, 2008).

Oxford Dictionaries

Oxford University Press. <http://www.oxforddictionaries.com/definition/english/condition> (accessed July 09, 2014).

"condition" *The state of something with regard to its appearance, quality, or working order.*

"characteristic" *A feature or quality belonging typically to a person, place, or thing and serving to identify them.*

Position of the Parties**Complainant's Position:**

[5] The Complainant explained that there is no complaint on any of the areas or parameters used to derive the assessment except for the 3,994 square feet that is characterised as 'bank'. The space was a branch of TD Canada Trust; however, the lease expired on September 30, 2013 and sometime before that date the bank relocated to a nearby location removing the vault when they left.

[6] The Complainant provided '2014 Property Assessment Notice', 'Property Assessment Detail Report', and the 'Non-Residential Properties – Income Approach Valuation' report for the subject property. The Complainant pointed out that the 'bank' space has a Market Net Rental Rate of \$45 per square foot for assessment purposes and should instead have a 'retail' rate of \$23 per square foot, which is typical for main level retail 'C' quality in the immediate area (C1 pp. 6-9).

[7] The Complainant disclosed maps and photographs showing the location and the exterior with covered windows testifying that the space is vacant (C1 pp. 11-15).

[8] The Complaint showed interior photographs taken in April of 2014 showing that the vault has been removed from the 3,994 square foot retail / bank space. The Complainant testified that the reason these photographs are present is because the Respondent uses the presence of a vault to determine if a space is a 'bank' or if it is 'retail' (C1 pp. 19-23).

[9] The Complainant reviewed an internet search for TD Canada Trust branch locations on or near 17th Avenue SW on April 17, 2014 to show the closest branch is the branch at 915 17 AV SW, approximately one block from the subject (C1 p. 24).

[10] The Complainant disclosed an email exchange from the property manager indicating the lease expired and was vacated by TD Canada Trust on September 30, 2013 (C1 p. 25).

[11] The Complainant provided pages from Respondent disclosure for an assessment complaint on October 15, 2013 showing that on August 30, 2013 TD Canada Trust had already covered up the windows and stopped operating a bank at the subject location (C1 pp. 26-28).

[12] The Complainant presented a property listing from April 17, 2014 showing the subject property has retail space for lease on the main level (C1 p. 29).

[13] The Complainant reviewed a retail 'C' class (quality) rental rate report prepared by the Respondent to show that \$23 per square foot is the typical rate assessed for the subject area of BL6 as well as BL7 and FS1 (C1 p. 30).

[14] The Complainant disclosed 'Non-Residential Properties – Income Approach Valuation' reports from three properties in the FS1 NRZ, which have been assessed in the same manner,

along with photographs to show comparability with the subject, and to show that the \$23 per square foot rate applied to similar properties' main level retail space (C1 pp. 31-39).

[15] The Complainant provided a rental rate study prepared by the Respondent for 'bank' space in the Beltline showing the assessed \$45 per square foot for the assessed 'bank' space. The Complainant testified that the absence of the subject property indicates that there is no new lease for the 3,994 square foot retail / bank space (C1 pp. 40-43).

[16] The Complainant presented all the Business Assessment information for the subject property to show the 3,994 square feet of retail / bank space is not being assessed; therefore, the Respondent is aware the space is vacant (C1 pp. 45-50).

[17] Through questioning, the Complainant acknowledged that the agent did not contact the Respondent during the Advance Consultation Period in October and November of 2013 and to the best of their knowledge the property owner did not contact the Respondent during the Customer Review Period available January through March of 2014. However, on February 8, 2014 the complaint was filed indicating that the bank is no longer present and the space should be assessed as retail space (Assessment Review Board Complaint p. 3 – reasons).

[18] The Complainant argues that the Respondent became aware during a site visit in August 2013 that the bank was no longer present. On February 8, 2014 the reasons for complaint identified that the bank is no longer present and the space should be assessed as retail. Six-weeks prior to this hearing, the Respondent received evidence that the 3,994 square foot space is no longer a bank.

[19] The Complainant calculated a revised Income Approach Valuation with the requested \$23 per square foot for 3,994 square feet of main level retail space arriving at a truncated requested value of \$3,660,000 (C1 pp. 17 and 52).

Respondent's Position:

[20] The Respondent presented that the Complainant did not contact the Respondent during the Advance Consultation Period in October and November of 2013 or the Customer Review Period available January through March of 2014.

[21] The Respondent reviewed a paragraph within a disclosed sheet labelled 'Property Valuation Methodology'; *"The assessed value of property represents: what a property may have realized in the market place if it had been sold as of the July 1st valuation date in the 'assessment year', under typical market conditions, by a willing seller to a willing buyer."* The Respondent testified that the bank was present on July 1st and its presence would have influenced the market condition (R1 p. 4).

[22] The Respondent provided property details including photographs, which confirmed the information provided by the Complainant (R1 pp. 6-15).

[23] The Respondent disclosed the rental rate study for 'bank' space in the Beltline showing the assessed \$45 per square foot for the assessed 'bank' space (R1 pp. 18).

[24] Through questioning the Respondent acknowledged that the Advance Consultation Period is not a legislated process and that no details are provided on how a property is assessed unless the Complainant signs up for website access or attends in person to review the proposed assessment.

[25] The Respondent also acknowledged that the complaint process is legislated and that the reasons for complaint were received on February 8, 2014 with the evidence being disclosed six-

weeks prior to the hearing.

[26] The Respondent argued that the date important for the Income Approach to Valuation is July 1st and the bank was present on July 1st.

[27] The Respondent when asked could not answer a question on what makes a bank a 'bank', but did acknowledge that some retail uses can use a vault. However, not a vault found in a 'bank'. The Respondent testified that with the vault present, any bank can move in the next day; therefore, the space is still 'bank' space, citing that there is no evidence that the vault was removed before December 31.

[28] The Respondent argued that a single tenant moving out cannot change the value of the subject property by one-point-five million dollars (\$1.5 M), the value is still present; therefore, the Board must confirm.

Board's Reasons for Decision:

[29] The Board understands the confusion over the condition and characteristics date versus the valuation date. The Board intended to use a guide written by the Government of Alberta – Municipal Affairs to help explain the dates in laymen terms; however, the Board found that the guides' explanation is not clear.

[30] The Board corrected the guides' language and used dates applicable to this hearing below:


For example, if a garage has been added to the property at any point during 2013, the property assessment for 2014 would be based on its market value as of July 1, 2013, and would include the garage as if it existed on July 1, 2013, even if it was added only a few days prior to December 31, 2013. The 2013 property assessment would not have included the garage because the garage was not built by the condition date (December 31, 2012). It is the physical condition and characteristics on December 31 that are valued on July 1 of the same year.

[31] The Board finds that the bank use ceased at some point prior to December 31, 2013; therefore, the assessment calculated as of July 1, 2013 is to value the 3,994 square foot space as a retail use.

[32] The Board in making this decision found no evidence that the presence of a vault is the key determination of bank space. Main floor retail space is just that. If a bank chooses to occupy a retail space, and if the Respondent has evidence that the value is changed by that occupation of space, then the market value can be assessed using that information.

[33] The Board finds the evidence indicates a value of \$3,660,000 for the subject property using the Income Approach Valuation methodology.

DATED AT THE CITY OF CALGARY THIS 23 DAY OF July 2014.



Jeffrey Dawson
Presiding Officer

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

NO.	ITEM
1. C1 – 54 pages	Complainant Disclosure
2. R1 – 26 pages	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.*

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Income Approach	Net Market Rent/Lease Rates