

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460(4).

between:

Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

M. Vercillo, PRESIDING OFFICER

J. Massey, MEMBER

J. Kerrison, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of Property assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 200206910

LOCATION ADDRESS: 334 11 Ave. SE

HEARING NUMBER: 58981

ASSESSMENT: \$12,870,000

This complaint was heard on 13th day of July, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom #4.

Appeared on behalf of the Complainant:

- Mr D. Mewha (Altus Group Ltd.)

Appeared on behalf of the Respondent:

- Mr. A. Czechowskyj (The City Of Calgary)
- Ms. C. Keough (The City Of Calgary)

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

NA

Property Description:

The subject property known as "Ribtor East", is a 4 story suburban office building constructed in 2008 and located in the "Beltline" district of SE Calgary. The building has a net rentable area of approximately 49,844 square feet (SF) of Office space. The building is situated on an assessable land area of approximately 19,500 SF and contains 43 parking stalls.

Issues:

- 1) The exempt portion of the subject property is calculated in error and does not account for parking stalls that are held in connection with the exempt tenant.
- 2) The assessed Net Annual Rental Value (NARV) rate applied to the subject's office space by the Respondent is too high from a market perspective. Specifically the Respondent used an office assessment rate of \$26 per SF, while the Complainant suggests a \$21 per SF rate is more appropriate. The main difference being due to the treatment of Tenant Improvements (TI's) in the calculation of NARV.
- 3) The assessed NARV rate applied to the subject's office space by the Respondent is too high from an equity perspective.

Complainant's Requested Value:

\$10,540,000

Board's Decision in Respect of Each Matter or Issue:

- 1) Issue 1 (as above).
 - a) The Complainant's evidence.
 - i) The Complainant provided a "Lease Abstract" that shows that as of January 1, 2009, the Calgary Police Service occupies a total of 10,610 SF of the total leasable area of the building. The abstract also references an article within the lease that states that the Calgary Police Service is apportioned 9 parking stalls for their use.
 - b) The Respondent's evidence.
 - i) The Respondent provided an Assessment Request For Information (ARFI) dated

April 10, 2009. The report, which was provided to the Respondent by the owner of the subject property, showed that the property contained 39 parking stalls with no references made for parking stalls allotted for exempt purposes.

- ii) The Respondent also provided an Assessment Request For Information (ARFI) dated July 7, 2008. The report, which was again provided to the Respondent by the owner of the subject property, showed that the property contained 43 parking stalls with again, no references made for parking stalls allotted for exempt purposes.
- c) In reviewing the information provided by both parties the Board finds in favour of the Complainant because:
 - i) The Board accepted the lease abstract evidence provided by the Complainant indicating that 9 parking stalls were apportioned to the Calgary Police Service (the exempt tenant).
 - ii) The allotment of 9 of the 43 parking spaces available to the exempt tenant seems reasonable on the basis of the ratio of the space occupied by the exempt tenant to the total leasable space of the building.
 - iii) Although, the Respondent's ARFI submissions did not indicate any exempt parking spaces, it is unreasonable for the Board to assume that no parking spaces would be allotted to the exempt tenant.
 - iv) Although the most recent ARFI indicated only 39 parking stalls, the Respondent used 43 in the Income Approach to value of the assessment. Indicating to the Board that the Respondent himself placed little weight on the parking information provided.

2) Issue 2 (as above).

a) The Complainant's evidence.

- i) The Complainant provided an ARFI dated May 28, 2008 that showed tenants, leased space, lease start dates and lease rates per SF of all leases applicable to the property. The ARFI also showed all TI allowances applicable to each lease applicable to the property.
- ii) The Complainant included a copy of Board Order: MGB 094/07. This business tax appeal concerned whether or not TI's provided to tenants by the landlords should be deducted from actual the rents the City of Calgary (City) uses in determining typical market rents." In this Board Order the concept of NARV was discussed and whether or not TI's ought to be considered in the determination of NARV. The conclusion of the panel in this case was "that tenant improvements do not typically increase the value of the premises to the landlord of the premises and that tenant improvement allowances should therefore be deducted when calculating NARV". The panel also found that a bylaw of the City of Calgary which was in direct contradiction to this calculation of NARV as determined in this Board Order was "inconsistent with the ACT and must not be applied."
- iii) The Complainant provided a summary of tenant rental costs comparing total rent costs to the tenant for their respective 5-year terms and the "Net Effective Rent" cost to the tenant after removing their TI allowances. The annual net effective rent per SF was approximately \$20.83. The Complainant is asking that a \$21 assessment rate for office space should be applied to the subject.
- iv) The Complainant provided an Avison Young Calgary Office Market Report showing A Class buildings are asking an average of \$23 per SF in June, 2009. The Building is rated A+ by the Respondent.

b) The Respondent's evidence.

- i) The Respondent provided an Income Approach to valuation for the subject property using an office space assessment rate of \$26.00 per SF in arriving at his

assessment.

- ii) The Respondent provided an ARFI dated March 13, 2009 that did not indicate any values for leasehold improvement allowances.
 - iii) The Respondent also provided the same prior year's ARFI as the Complainant dated May 28, 2008 that did indicate values for leasehold improvement allowances for the applicable leases.
 - iv) The Respondent provided a copy of the City of Calgary Bylaw 1M2010 indicating that for assessment purposes, the NARV is "exclusive of operating costs, but inclusive of the value of leasehold improvements."
 - v) The Respondent provided a copy of Board Order: MGB 145/07 and suggests that if the Board agrees with the Complainant on lowering the office space assessment rate per SF for the subject, then the Board must lower the capitalization rate and therefore the revised assessment would be similar.
- c) In reviewing the information provided by both parties the Board finds in favour of the Complainant because:
- i) The Board found that the Respondent was provided with an ARFI in 2008 which clearly indicated leasehold improvement allowances existed in the applicable leases.
 - ii) The Board agrees with Board Order MGB 094/07 which clearly indicated that TI's ought to be deducted from actual rents in the calculation of NARV and that the City of Calgary's bylaw that was inconsistent with the Municipal Government Act should not be applied.
 - iii) The Board also agrees with and references the recent Court of Queen's Bench (QB) decision from the Honourable Mr. Justice P.J. McIntyre dated the 18th of June, 2010 which clearly supported the findings of Board Order MGB 094/07.
 - iv) In keeping the aforementioned MGB and QB decisions, the City of Calgary' Bylaw 1M2010 is in direct contravention of both those decisions and cannot be applied.

3) Issue 3 (as above).

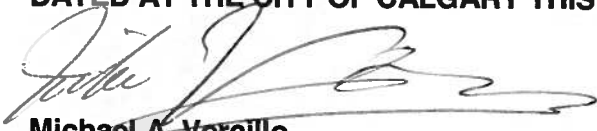
- a) The Complainant's evidence.
 - i) The Complainant provided an assessment summary report for a comparable property known as the 2 building Vintage Towers built in 1970 and 2004 respectively, located in the Beltline district and quality rated as A- buildings.
 - ii) The Complainant provided the 2010 and 2009 Income Approach to Value assessment for the comparable property. It showed that the office space assessment rates per SF used were \$20 for the 1970 built building and \$23 for the 2004 built building. In 2009 the rate used was \$21.00 for each building.
- b) The Respondent's evidence.
 - i) The Respondent provided no information on this issue.
- c) In reviewing the information provided by both parties the Board finds in favour of the Complainant because:
 - i) A \$21.00 per SF office space assessment rate applied to the subject seems fair and equitable when comparing it to the comparable property provided by the Complainant.
 - ii) The Respondent's office space assessment rate of \$26 per SF seems unfair and inequitable when compared to the comparable property provided by the Complainant.

Board's Decision:

The Board accepts the Complainant's valuation for the subject property and revises the

assessment at \$10,540,000. In accepting the Complainant's calculation the Board notes that the Complainant used an office space area of 50,980 SF in his calculation and the assessment is net of the exempt space assessment, again calculated by the Complainant at \$2,770,000.

DATED AT THE CITY OF CALGARY THIS 20 DAY OF July 2010.



Michael A. Vercillo

Presiding Officer

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.*