

**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-26.1, Section 460(4).

**between:**

***Altus Group, COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***W. Kipp, Presiding Officer***

***K. Kelly, Board Member***

***J. Massey, 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 2010 Assessment Roll as follows:

**ROLL NUMBER: 067243402**

**LOCATION ADDRESS: 801 – 7 Avenue SW, Calgary AB**

**HEARING NUMBER: 58511**

**ASSESSMENT: \$228,710,000**

This complaint was heard by a Composite Assessment Review Board (CARB) on the 27<sup>th</sup> day of September, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 7.

Appeared on behalf of the Complainant:

- D. Genereux & S. Sweeney-Cooper

Appeared on behalf of the Respondent:

- W. Krynski & A. Czechowskyj

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

This was one of 17 hearings regarding Class A and AA office buildings in the Calgary downtown that were scheduled to be heard during the week of September 27 to October 1, 2010. At the outset, the Complainant requested a postponement because notice for these hearings had been relatively short and a number of personnel from the Complainant company (Altus Group) were unavailable to attend and provide evidence. No alternative dates were suggested for a continuation.

The Respondent objected to the CARB granting any postponement, arguing that both parties had agreed to these current hearing dates and that there had been sufficient notice. Further, there had already been hearings and decisions rendered on "global issues" which pertained to all of the Class A-AA office building complaints so these hearings were to address "site specific" matters for those properties where there were site specific issues. There was no exceptional circumstance for granting a postponement. The Complainant was aware of these hearing dates, having agreed to them, and the individuals who had prepared the evidence materials should have been present and prepared to proceed.

**Decision of the CARB on the Postponement Request:**

The CARB denies the request for a postponement of the hearings. These hearings had been scheduled, with the agreement of both parties, for the week commencing September 27<sup>th</sup>, so both parties should have been prepared. Having regard to the Complainant's argument that the individuals who were familiar with specific properties and who had prepared the evidence materials for those properties were unable to attend the hearings, the CARB is accustomed to receiving evidence and hearing argument from someone other than the individual who inspected the subject property and prepared the documents.

The CARB was concerned that a postponement of these hearings until late November, which appeared to be the only alternative hearing dates, would not be practical given the number of outstanding complaints and the December 31<sup>st</sup> deadline for issuance of written decisions.

The CARB informed the parties that it would make every effort to arrange the order of the hearings to accommodate the parties in having the appropriate individuals present.

Section 15(1) of the *Matters Relating to Assessment Complaints Regulation* prohibits an assessment review board from granting a postponement or adjournment except in exceptional circumstances. The reasons given by the Complainant in this postponement request were not considered to be exceptional circumstances.

**Property Description:**

The property that is the subject of this complaint is a 37 storey Class A office building located in the DT2 downtown submarket area. The building, known as Nexen Tower has a rentable area of 604,142 square feet comprising office and retail space. Retail space is on the ground floor (4,000 square feet) and on the +15 level (2,250 square feet). There is underground parking for 338 vehicles. The building was constructed in 1979. The property is situated on the southwest corner of the intersection of 8<sup>th</sup> Street and 7<sup>th</sup> Avenue SW. There are two +15 connections, one to the north over 7<sup>th</sup> Avenue and one to the east over 8<sup>th</sup> Street.

**Issues:**

The Complainant raised the following matters in section 4 of the complaint form:  
*Assessment amount (No. 3 on the form) and Assessment class (No. 4 on the form).*

The Complainant also raised 15 specific issues in section 5 of the Complaint form however, most of these related to global or common issues that had been issues for all Class A and AA office property complaints from this Complainant.

At this hearing, the Complainant carried forward all of the arguments regarding global issues. There were two other issues that were specific to this property – the assessed rent rate for underground parking spaces and the rent rate for retail space.

**Complainant's Requested Value:**

\$168,525,100

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

Various Calgary CARB panels have heard the global or common issues evidence and argument at prior hearings regarding complaints against Class A-AA office building assessments and decisions have been rendered in regard to those complaints.

Global issues:

1. Office Rental Rate
2. Vacancy allowance
3. Capitalization rate

The most recent decision of the Calgary Assessment Review Board regarding Class A-AA properties, CARB 1657/2010-P, issued on 27 September 2010, dealt with each of these three global issues. The findings and reasoning will not be repeated but are carried forward to this decision.

The findings on these three issues remain the same as in that prior decision.

The reasoning for the decisions based on the findings remains the same. For details of the findings and reasons for this portion of this decision, CARB 1657/2010-P should be read.

**Parking Rate Issue:**

The Complainant argued that the rental rate for parking stalls should be reduced from \$475 to \$440 per month. A rent roll for December 2009 indicated that most of the parking stalls (282) were leased to Nexen, the only office tenant in the property, at \$435 per month. The remaining stalls were rented at rates of \$435 and \$480 per month. No details of the rent/lease arrangements for parking were provided.

The Respondent argued that the subject is a Class A building and the parking rate applicable to all Class A buildings is \$475 per month. That is the typical rate for that class of building.

**Retail Rent Rate Issue:**

The assessment record shows that there are 4,000 square feet of lower floor retail space assessed using a rent rate of \$24.00 per square foot plus 2,250 square feet of upper level retail space assessed using a rent rate of \$21.00 per square foot. The Complainant provided a rent roll showing that 8,750 square feet of main and second floor retail space were leased to a single tenant (Chutnet Restaurant & Bar). The lease started in October 2009 for a five year term. Rent started at \$7.71 per square foot and then escalated to \$9.26 in October 2011. Based on this lease, the Complainant requested that the overall retail rental rate be set at \$8.00 per square foot.

The Respondent argued that the Complainant had dealt with retail rent rates as one of its global issues for A-AA buildings and that the CARB had already issued decisions on those global issues, confirming that the rates used in making the assessments are reasonable for the building class. Questions were raised about the applicability of the Complainant's rent roll data as at the valuation date of July 1, 2009. A copy of the April 2009 response to the City's Assessment Request for Information (ARFI) was in evidence. The ARFI showed a single tenant (Oh! Canada Restaurant & Bar) occupying retail spaces of 4,000, 2,000 and 750 square feet. It appeared as if there was no rent charged for the 2,000 square feet of space. For the leases that commenced in January 2007, rent was set at \$12.00 per square foot for the terms of 10 and 7 years, respectively. The Respondent stated that rents had increased since January 2007. Further, the 750 square feet of retail space was not assessed, according to the assessment summary.

**Findings:**

**Parking:**

There was no evidence before the CARB to show that the parking in the subject building was inferior to that in other nearby Class A buildings. In addition, there was no evidence to show that the parking rent rates were not fixed to the office space lease and therefore not subject to periodic changes as might be dictated by the market. The Respondent uses a \$475 per month per stall for underground parking in Class A buildings. From the equity perspective, that rate is reasonable for the subject property as well.

**Retail:**

Overall, the evidence relating to retail space and rents for that space was very confusing. No conclusive answers were provided for questions about rented space differences (4,000, 2,000, 750, or 8,750 square feet) or about tenants, leases and lease terms. The CARB noted that the Complainant's rent roll showed 604,320 square feet of office space, 8,750 square feet of retail space and 16,000 square feet of storage space. The assessment was based on 597,142 square

feet of office space, 6,250 square feet of retail space and 750 square feet of storage space. No explanations were given by either party for the discrepancies in areas. Having received insufficient detail on floor areas, leases and tenants, the CARB finds that there are no grounds on which to make any changes to the assessment calculations. On the surface, it seems that the \$21 and \$24 per square foot rates used in the assessment calculations might be excessive which suggests that the retail space in this building is inferior to retail space in other Class A buildings. There was no clear evidence of this inferiority, however, so the CARB will not make any adjustments.

**Board's Decision:**

The 2010 assessment is confirmed at \$228,710,000.

It is so ordered.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF October 2010.

  
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W. Kipp  
Presiding Officer

**SUMMARY OF EXHIBITS**

**Exhibit**

C1 Assessment Review Board Complaint Form  
C2 Evidence Submission of the Complainant  
R1 Respondent's Assessment Brief  
Plus previously filed documents regarding global or common issues.

*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.*