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(4).

between:

Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

L. Lundgren, PRESIDING OFFICER
J. Rankin, MEMBER
S. Rourke, 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:	**201181740**
LOCATION ADDRESS:	**46 Aero Dr NE**
HEARING NUMBER:	**59266**
ASSESSMENT:	**$15,510,000**

This complaint was heard on the 12th day of Nov, 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:

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

Appeared on behalf of the Respondent:

- *K. Buckry* *Assessor, City of Calgary*

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

There were no procedural or jurisdictional matters.

Property Description:

The subject property is an 11.9 acre parcel of land improved with two multi tenant industrial warehouses. The building located at 46 Aero Dr NE has 83,535 square feet of rentable space, and the property located at 52 Aero Dr NE has 111,500 square feet of rentable space. The land is leased from the Calgary Airport Authority (CAA).

Issues:

1. What is the correct vacancy rate to value the subject property for assessment purposes?
2. What is the correct rental rate to value the subject property?
3. Should the property assessment be increased to $18,680,000 as requested by the Respondent?

The only issues that the Complainant brought forward in the hearing before the Composite Assessment Review Board (CARB) are those referred to above, therefore the CARB has not addressed any of the other issues initially raised by the Complainant on the complaint form.

Complainant's Requested Value: $ 9,660,000

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

1. What is the correct vacancy rate to value the subject property for assessment purposes?

The Complainant argued that the industrial properties located on the Calgary Airport Authority (CAA) land are different than the industrial properties located in the balance of the industrial areas of the city. All of the CAA land is leased to tenants and the tenant improvements are vested to the CAA on the termination of the lease, whereas, in the other industrial areas the property owner owns both the land and improvements. Airport properties are seldom sold and if a sale does occur, it is for the improvements only, therefore, the primary method of valuation for airport properties is the income approach. Historically, the airport properties were assessed using a higher capitalization rate than other industrial area properties. The higher capitalization was applied in recognition of the increased business risk to the land tenants on airport leased land. This year, the Respondent valued the airport properties on the income approach while valuing the other industrial properties on the direct sales approach. For these reasons, the Complainant asserts that the airport properties are different than properties located in the other industrial areas of the city.

The Complainant argued that the 5.25% vacancy rate used by the Respondent to prepare the subject assessment does not reflect the high vacancy rates of the industrial properties on airport land. The Complainant submitted that the airport lands have experienced high vacancy rates as opposed to the other industrial areas, and the average vacancy rates for industrial properties in the northeast, central, and southeast areas of the city should not be used to value the subject property. The Complainant demonstrated the difference in vacancy rates by providing third party reports for vacancy rates in industrial areas. The industrial market vacancy rates reported by CB Richard Ellis (CBRE) for the second quarter of 2009 are: northeast 4.1%, central 1.2%, southeast 5.6%, and the Airport district 12.4%. For the third quarter of 2009 CBRE reports: northeast 4.3%, central 2.5%, southeast 5.0% and the Airport district 11.3%. The Complainant also provided the Avison Young industrial market report for year end 2009/2010 which reported the northeast vacancy rate at 1.7%. None of the vacancy rates for industrial areas reported by third parties approach the actual vacancy experienced by the airport land tenants. Of note, are the higher vacancy rates of 12.4% and 11.3% for the Airport district.

The Complainant argued that the average vacancy rate for the airport properties should be used to value the subject property. In support of this argument, the Complainant presented an Airport Vacancy study using nineteen airport properties with a total area of 2,347,071 square feet having an average vacancy rate of 14.34% as of July 1, 2009. Based on this evidence, the Complainant requested a vacancy rate of 14% be applied to the subject property.

The Respondent confirmed that a vacancy rate of 5.25% was used to calculate the assessment, and that it was drawn from all of the industrial areas in the city. The Respondent explained that the average vacancy rate of airport properties was not used to assess the airport properties because the airport forms a small part of the northeast industrial area and is too small to develop a typical vacancy rate. Although it was not used in the preparation of the assessment, the Respondent provided the 2010 Airport Vacancy Chart based on all of the land leased by the CAA. The chart shows a total space of 4,344,269 square feet with a vacancy rate of 13%. The Respondent was critical of the Complainant's Airport Vacancy study because it considered only 2,347,071 square feet of the airport space which sample is too small to be reliable.

Rather than relying on its own vacancy rate study, the Respondent relied on a third party report published by Colliers International. The 5.25% vacancy rate used to prepare the assessment was based on the Colliers International second quarter 2009 report which stated the city wide industrial vacancy rate as 5.21%. The Respondent requested the Board to confirm the use of the 5.25% vacancy rate.

The Board accepts the Complainant's argument that the industrial properties located on CAA land are not similar to industrial properties located elsewhere in the city, and that the vacancy rates from other industrial areas should not be used to assess the properties located on the CAA land. The Board considered the vacancy studies performed by each of the parties and finds the Respondent's 2010 AIRPORT VACANCY study to be the most accurate because it includes all of the vacant space on the airport land. The Complainant's sample of 2,347,071 square feet represents approximately 54% of the total space of 4,344,269. The Board observes that the results of the two vacancy studies are almost identical, with the Respondent's average vacancy rate of 13% and the Complainant's average vacancy rate of 14.34%. The Board also considered the CBRE reports for the Airport district and finds that the vacancy rates support the results of the vacancy rate studies performed by the two parties. CBRE reported a vacancy rate of 12.4% in the second quarter of 2009, and a vacancy rate of 11.3% in the third quarter of 2009. The Board is placing the most weight on the Respondent's 2010 AIRPORT VACANCY study and will apply a vacancy rate of 13% in the valuation of the subject property for assessment purposes.

2. What is the correct rental rate to value the subject property?

The Complainant argues that the rental rate should be adjusted downward for leasing commissions and tenant improvements (also called incentives). In support of this argument, the Complainant submitted the *Calgary (City) v. Canadian Natural Resources Limited, 2010 ABQB 417* decision. The core issue is whether tenant improvement allowances should be deducted from the actual rents the City uses in determining typical market rents for business tax assessment purposes. The Complainant referred to several sections, and one section in particular, the decision states, "Tenant improvements do not add value to the landlord since whatever value is added to the premises when the improvements are made at the beginning of the lease term is subtracted from the value of the premises when the improvements are removed at the end of the lease term." The Complainant stated that the court decision agrees with the MGB's decision that tenant improvements do not typically increase value and should therefore be deducted from the net annual value.

The Complainant requested the board to remove the incentives (leasing commission and tenant improvements) from the rental rate. The Complainant provided the actual rental rates adjusted downward for incentives for the tenants in each of the two buildings. The median rental rate of building #46 is $7.45psf and the median rental rate of building #52 is $6.81psf. The Complainant requested the Board to apply a rental rate of $6.75psf to each of the buildings.

The Respondent submitted that the *Calgary (City) v. Canadian Natural Resources Limited, 2010 ABQB 417* decision is not relevant because it is a decision related to business assessment and this complaint relates to a property assessment. The Respondent confirmed that the assessment department does not adjust the rental rates downward for incentives, and instead, uses the rental rates reported on the Assessment Request for Information (ARFI). The Respondent acknowledged that the "leasehold improvement allowances" are requested on the ARFI form.

The Respondent provided no lease comparables in support of the rental rates used to prepare the subject assessment. The rental rate applied to building #46 is $7.75psf and the rental rate applied to building #52 is $8.00psf. The rental rate for building #52 is adjusted upward by $0.25psf because it is located on the airside.

The Board considers the *Calgary (City) v. Canadian Natural Resources Limited, 2010 ABQB 417* decision relevant with respect to the general principle that tenant improvements do not typically increase the value of premises to the landlord and should therefore be deducted. Based on the evidence presented by the Complainant, the Board concludes that the tenant improvements should be deducted from the actual rental rate because the tenant improvements are temporary to the extent that they satisfy the requirements of the current tenant and may not satisfy the next tenant.

In the absence of any lease comparables provided by the Respondent, the Board relied on the actual lease rates adjusted downward for incentives from the two subject buildings. Based on the median of the adjusted rental rates for each of the buildings, the rental rate for building #46 is reduced to $7.50psf and the rental rate for building #52 is reduced to $7.00psf.

3. Should the property assessment be increased to $18,680,000 as requested by the Respondent?

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The Respondent requested the Board to increase the subject property assessment based on an income approach using Altus' parameters of a 7.5% capitalization rate and a 5.0% vacancy rate. The Respondent is not acknowledging that these parameters are correct but chose to use them because Altus Group used them in a previous complaint. A Valuation Summary showing its intention to seek an increase in the assessment was included in the disclosure of its evidence in accordance with section 8(2)(b) of MATTERS RELATING TO ASSESSMENT COMPLAINTS REGULATION (MRAC).

The Complainant submitted that the parameters used by the Altus Group in a previous property complaint are not relevant because the properties are not similar. In particular, the capitalization rate requested in the previous complaint was for an industrial property located in an industrial area where the capitalization rates are lower. The subject property located on leased land should have a higher capitalization rate than a property located in an industrial area as argued earlier on the vacancy rate issue.

The Complainant raised an objection to the Respondent's request to increase the assessment on the basis that this is a new issue and section 9(1) of *MRAC* states that a composite assessment review board must not hear any complaint in support of an issue that is not identified on the complaint form.

The Board finds that the Respondent's request to increase the assessment is not a new issue and the intention to seek an increase in the assessment was properly disclosed. The Assessment Review Board Complaint form identifies the assessed value as one of the issues and the Respondent's evidence addresses, among other things, the request to increase the assessment.

With respect to the Respondent's request to increase the assessment, the Respondent failed to produce any evidence to show that a capitalization rate of 7.5% and a vacancy rate of 5.0% would result in a correct estimate of market value. To the contrary, the Respondent stated that it is not acknowledging that the parameters used are correct. Based on the lack of evidence, the Board denied the request.

Board's Decision:

The complaint is allowed and the assessment is reduced to $12,520,000.

DATED AT THE CITY OF CALGARY THIS 8 DAY OF December 2010.

L. Lundgren
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.