

**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), Revised Statutes of Alberta 2000 (the Act).

between:

Altus Group Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

M. Vercillo, PRESIDING OFFICER

D. Morice, MEMBER

P. Charuk, MEMBER

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

ROLL NUMBER: 201562352

LOCATION ADDRESS: 108 9 AV SW

HEARING NUMBER: 60569

ASSESSMENT: \$15,590,000

SUPPLEMENTARY: \$3,897,500 (3 months)

This complaint was heard on 12TH day of April, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom #2.

Appeared on behalf of the Complainant:

- *Mr. D. Hamilton (Altus Group Limited)*
- *Mr. G. Worsley (Altus Group Limited)*

Appeared on behalf of the Respondent:

1. A. Czechowskyj (The City of Calgary)

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

The Calgary Composite Assessment Review Board (CARB) derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

Property Description:

The subject property known as "Le Germain", is a newly constructed 10 story office building located in downtown Calgary. The office building has a net rentable area of approximately 89,875 square feet (SF) including 7,012 SF of storage space. The building is situated on an assessable land area of approximately 27,664 SF.

In the 2009 assessment year the subject was in the middle of its construction and accordingly the 2010 annual assessment was \$16,000,000. This annual assessment value was not appealed.

This complaint is with regards to the subject's 2010 supplemental assessment. The supplemental assessment is based on supplementary property assessment of \$15,590,000 prorated for three months of the 2010 tax year.

Issues:

The Complainant raised two objectives in his presentation; however, as of the date of this hearing, the Complainant addressed the following issue as restated below:

1. The area or office space that should be subject to a supplemental assessment should be 49,314 SF and not the 89,875 SF used in the supplemental assessment.

Complainant's Requested Value:

\$ 798,900

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

ISSUE 1: The area or office space that should be subject to a supplemental assessment should be 49,314 SF and not the 89,875 SF used in the supplemental assessment.

The Complainant's document of evidence labeled "**Exhibit C1**" provided the following evidence with respect to this issue:

- A summary of the Respondent's "Supplementary Assessment Calculation". The calculation indicated that the Respondent assessed the property using the income approach to value. A market rental rate of \$30.00 per SF and \$10.00 per SF for office space and storage space respectively was used in the valuation. Using a vacancy rate of 3.00%, operating costs of \$18.00 per SF, a non-recoverable rate of 2.00% and a capitalization (cap) rate of 7.50%, the Respondent's income approach assessed the subject at \$31,749,000. The 2010 annual assessment was \$16,000,000, which left a difference of \$15,590,000 for the supplementary assessment value. However, the Respondent prorated the supplementary assessment for three months, which he considered to be the number of months that the subject was complete or occupied or at least capable of being occupied (deemed October 1, 2010). The Complainant does not take any issue with any of the parameters used in the calculation except for the total space or SF used in the calculation.
- Several pictures were provided of the unoccupied 3rd, 5th and 9th floors. These pictures, which the Complainant claims were taken in February 2011, indicate that the unoccupied spaces are essentially "shell" spaces with little more than the exterior walls (with unfinished drywall), elevators, plumbing and electrical installed. The Complainant argues that these unoccupied spaces are not capable of being occupied and therefore, in accordance with *MGA Section 314 (4)*, should not be subject to a supplemental assessment.
- An "Office Tower Leasing Details" chart indicated the tenants that did occupy the building at various commencement dates in 2010. The chart further indicated the space or area by SF that each of these tenants occupied. The total space occupied in 2010, as indicated in the chart, was 49,314 SF. The chart also calculated that the prorated average occupancy was about 4 months in 2010.
- An income approach to value calculation using the 49,314 SF calculated in the previous chart, and the same income approach to value parameters used by the Respondent. In this valuation, the Complainant calculated that the total assessment for the property should have been \$18,396,000. Since the 2010 annual assessment of the subject was \$16,000,000, the difference of \$2,396,000 was the derived value for the 12 month supplementary assessment. Therefore, the prorated 4 month supplementary assessment approximated the requested value of \$798,900.

The Respondent's document of evidence labeled "**Exhibit R1**" provided the following evidence with respect to this issue:

- Several pictures dated March 4, 2011 of the subject's exterior. The office tower is part of a building complex, that includes what appears to be a similarly sized hotel building sitting adjacent to the subject, as well as a 5 or 6 story condominium building that sits on top of the office building (the subject) and hotel "superstructure".
- A Supplementary Property Assessment Notice dated November 25, 2010 that clearly indicated that the subject's prorated supplementary assessment was \$3,897,500. The proration was based on a 12 month assessment for land and building of \$15,590,000

and was prorated for a completed or occupied date of October, 2010.

- In support of the supplemental assessment, an alternative approach to the supplemental assessment calculation, based on occupancy dates and areas of the various tenants that occupied a portion of the office building in 2010. The calculation concluded that in 2010 the office building had 24,589 SF of occupied space and 64,449 SF of unoccupied space. The unoccupied space was adjusted to include a onetime allowance of \$50.00 per SF for Tenant Improvements (TI). Given the TI allowances, the Complainant calculated a supplemental assessment of \$12,526,550 for a 12 month period. If prorated for 3 months, as was used in the actual supplemental assessment, the value would work out to \$3,131,138. If prorated for 4 months, as was used by the Complainant, the value would work out to \$4,175,516 and would tend to support the existing 3 month supplemental assessment. The Respondent offered during his testimony that the 3 month proration was likely a more reasonable approximation of the supplemental assessment.

The Complainant's also provided a "rebuttal" document of evidence labeled "**Exhibit C2**" which provided the following evidence with respect to this issue:

- An income approach valuation using the 24,589 SF of occupied space used by the Respondent in his alternative approach to the supplemental assessment valuation. This valuation (which excluded exempt space) resulted in a negative supplemental assessment. As a result, the Complainant concluded that the Respondent's alternative approach to supplemental assessment must be wrong or invalid.
- Definitions of the terms "complete" and "occupy" from Merriam-Webster online. The word "complete" was defined, "to bring to an end and especially a perfected state" and "to make whole or perfect". The word "occupy" was defined, "to take or hold possession or control of" and "to reside in as an owner or tenant".
- Several definitions from the Calgary Real Estate Board, Commercial Handbook. Definitions were highlighted for terms such as; Building Shell, Fit Up, Fixture, Shell Space, Space Planning, Tenancy and Tenant Improvement Allowance. Definitions were also highlighted from the Alberta Building Code 2006 Volume 1 handbook for terms such as "occupancy" and "occupancy permit". The Complainant pointed out that as defined, an "occupancy permit...shall not be construed to be a licence to operate or engage in any business".
- Decisions from both Court of Queen's Bench (QB) and the Alberta Municipal Government Board (MGB). A QB decision from Madame Justice Acton, found that "tenant improvements that do not exist at the time of the assessment cannot be considered assessable...". Two of the three MGB decisions provided (MGB 103/10 and MGB 088/10), involving newly constructed office buildings and also subject to supplemental assessments, found that "when an area is unoccupiable, it is not complete" and therefore those areas should not be subjected to a supplementary assessment. In contrast, MGB 105/10 which also involved a newly constructed office building and also subject to a supplementary assessment, found that similar unoccupied spaces could be assessed as long as an appropriate reduction is made to market rent for TI allowances. It was revealed during testimony that the MGB 105/10 decision will be reheard at a future date.

The **CARB** finds the following with respect to this issue:

- That only the completed or capable of being occupied space should be subject to a supplemental assessment. This is consistent with MGB decisions 103/10 and 088/10, and more importantly meets the requirements of *MGA Section 314 (4)*. It is the opinion

of the CARB that in order for office area to be complete, occupied or capable of being occupied it must be readily or immediately available for occupation or its intended use. Clearly, in this case, the unoccupied areas needed substantial improvement before any tenant could occupy it for its intended use. Therefore, the CARB accepts the occupied space of 49,314 SF, as provided by the Respondent, to be the only area that can be subject to a supplemental assessment.

- That the income approach to valuation, as consistently used by both parties is acceptable, with the proviso that the resulting supplemental assessment valuation is reduced by the previous annual assessment, by the ratio of the space or area subjected to the supplemental assessment to the total space. In this case, the Respondent used 49,314 SF of occupied or completed space but reduced it by the previous year's total annual assessment, which arguably is the entire office space. In the opinion of the CARB, this is mathematically incorrect. The annual assessment reduction should have been adjusted to reflect the ratio of the space completed to the total space. In this case the ratio of 49,314 SF of completed space to the 89,875 SF of total space. In doing so, the Respondent's calculation would have resulted in a 4 month prorated supplemental assessment of approximately \$3,200,000.
- That the Respondent's alternative approach to value of \$3,138,138, using a 3 month proration, is a reasonable approximation of the value that would be calculated using the income approach as in the previous bullet.

Board's Decision:

The CARB revises the supplemental assessment to a value of \$3,130,000.

DATED AT THE CITY OF CALGARY THIS 19 DAY OF April 2011.



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.*