

## **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:**

***Smart Technologies ULC (as represented by Altus Group Ltd.), COMPLAINANT***

**and**

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

**before:**

***K. Thompson, Presiding Officer***

***I. Fraser, Board Member***

***H. Ang, 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 2013 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>037182508</b>
<b>LOCATION ADDRESS:</b>	<b>3636 Research Rd NW</b>
<b>FILE NUMBER:</b>	<b>72482</b>
<b>ASSESSMENT:</b>	<b>\$68,000,000</b>

This complaint was heard on the 20th day of August, 2013 at the office of the Assessment Review Board located at Floor # 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- D. Chabot Agent, Altus Group Ltd.

Appeared on behalf of the Respondent:

- C. Neal Assessor, City Of Calgary

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

[1] No procedural or jurisdictional matters were raised. The Board proceeded to hear the merits of the complaint.

**Property Description:**

[2] The subject property, known as Smart Technologies, is a 204,874 square foot Class A+ owner occupied suburban office. The building was constructed in 2009, is single tenanted and is located in the community of Varsity. This property is sited on a parcel size of 2.76 acres on a land lease with a Land Use Designation (LUD) of Special Purpose-University Research Park.

[3] The subject property is assessed based on the Income Approach to Value with a capitalization rate of 6.00%, rental rate of \$22.00 per square foot (psf) for 173,968 square feet (sf) of office space, \$10.00 psf for 21,807 sf of below grade office space, \$3.00 psf for 9,094 sf of storage space and has 264 enclosed parking stalls. This property has an assessed value of \$68,000,000.

**Issues:**

[4] The Complainant contends that the capitalization rate of 6.50% is a more appropriate given the land lease and Special Purpose LUD restrictions for this property.

**Complainant's Requested Value:** \$62,760,000

**Board's Decision:**

[5] Assessment is confirmed at \$68,000,000

**Legislative Authority, Requirements and Considerations:**

[6] The *Municipal Government Act*, Section 460.1(2), subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in Section 460(5) that is shown on an assessment notice for property, other than property described in Subsection 460 (1)(a).

## **Position of the Parties**

### **Complainant's Position:**

[7] The Complainant stated that the subject property is a very unique property where Smart Technology owns the building and has an 81 year land lease, commencing in 2006, from the Alberta government that has an annual rental payment. At the end of the 81 year term, the improvements become the property of the Landlord without payment. In addition, the Landlord has put specific conditions as to the design and permitted uses of the property. The land lease agreement was put into evidence [pg 33-70, C-1].

[8] Further, the Complainant states that the property is located in a Special Purpose LUD area which restricts the uses of this property and creates a higher risk for any potential investors. Any tenant must be in the scientific research, research and development and technology commercialization in association with the University of Calgary, Province of Alberta or the Government of Canada and accommodate a limited range of complementary support uses. The Land Use Guidelines were submitted into evidence [pg 27, C-1].

[9] The Complainant states that this property is very similar to the properties at the Calgary International Airport and should be treated the same. A City of Calgary Request for Information was submitted on an Airport warehouse sale in May of 2010 to show the purchaser felt that the purchase price was adjusted by between 30 and 40 bases points due to the land lease. This owner assumed the land lease on a new built property in excellent condition and 100% leased for a 5 year term [pg73, C-1]. An Airport land lease document was included [pg 89, C-2].

[10] A 2009 City of Calgary Assessment Review Board Brief was submitted to show the section where the City outlined the Calgary Airport Land and Tenants Valuation. It was noted that the land leases at the Airport were typically between 25-40 years with recent leases upwards to 55 years. Stated in this document was the fact that due to few sales of airport properties it is impractical to do a capitalization rate study. The City document states that Airport tenants share the same factors as non airport tenants except for a perceived degree of risk associated with the land lease. Airport tenants have slightly more risk due to an annual lease payment to the Calgary Airport Authority coupled with the uncertainty of future land lease terms. The City of Calgary uses an elevated capitalization rate to recognize the circumstances of the leasehold relationship with the Airport.

[11] A 2013 Calgary Airport - Property Explanation Summary from the City of Calgary for 10707 25 St NE was submitted to show the capitalization rate was 6.75% for the July 1, 2012 valuation date. This property is an Industrial Warehouse.

[12] Two Canadian Capitalization Reports were produced (CBRE and Colliers International) to show that industrial properties in Calgary in Q2 of 2012 were 5.75% to 6.25% and 6.00% to 6.25% respectively. The Complainant submits that there is a difference in capitalization rates for airport warehouses and warehouses not on leased land.

[13] Several pages from a 2013 City of Calgary Hearing Brief for 11 Dufferin Pl SE were presented to show the City was supporting a 6.00% to 6.25% capitalization rate for fee simple warehouse properties. The Complainant compared this industrial capitalization rate with the Airport warehouses 6.75% capitalization rate.

[14] The Complainant submitted the subject properties 2012 CARB decision (CARB 2121/2012) along with a number of other board decisions for consideration.

[15] In response to the City's evidence regarding the 2013 *post facto* sale of the subject property the Complainant presented email evidence from Smart Technologies stating the sale of the property was a bid among a few interested parties [pg 5, C-2].

[16] A comparison of two sales was made [pg 3, C-2], one is the subject sale, a land lease and the other a suburban office in Quarry Park. The Complainant states the subject property has a higher capitalization rate of 6.64% based on its sale compared to 5.17% capitalization rate of the Quarry Park sale. The Complainant submits the difference is due to the land lease terms.

#### **Respondent's Position:**

[17] The Respondent submitted a 2013 Suburban Office Capitalization Rate Study containing seven A class suburban office buildings [pg 31, R-1] along with all supporting documentation. The resulting median value was 5.85 and the average was 5.63. The typical capitalization rate used for A class suburban offices is 6.00%. This is the rate used for the subject property. The Respondent also provided a 2013 Calgary Airport - Property Assessment Explanation Supplement to show that Airport suburban A Class offices are also being assessed using a 6.00% capitalization rate [pg. 42, R-1]. The Respondent noted that since 2007 there have been four sales of airport properties, one of these was a suburban office. The suburban office airport property transacted at the City's market value level. The City values the fee simple interest which also includes the Calgary Airport Authority's interest as well.

[18] The Respondent commented on the warehouse documents produced by the Complainant and indicated that all warehouse properties are valued on the Sales Comparison Approach so capitalization rates would not be determined for these properties. The Respondent also stated that capitalization rates presented in third party reports were not considered a reliable source as there is no documentation provided to show what went into that calculation.

[19] The Respondent produced one equity comparable at 3520 Research Way NW to show similar properties are assessed the same as the subject property [pg. 44, R-1].

[20] A \$78,000,000 *post facto* sale of the subject property (sale date of 2013 - 05 - 09 with an unverified appraisal with an effective date of October 01, 2012 for \$80,300,000) were submitted to show that the July 1, 2012 market value assessment of \$68,000,000 was generous given the sale price of May 2013 [pg 21-29, R-1].

[21] Information was provided by the Respondent to show that Airport lands were owned by the Federal Government and leased to the Calgary Airport Authority and the subject property's land is owned by the Provincial Government. A list of permitted uses was provided for the Airport district.

[22] Several Board Decisions were included for consideration.

#### **Board's Reasons for Decision:**

[23] The Board reviewed all the evidence presented by both the Complainant and Respondent. It must be noted that while the Board pays heed to previous Board Decisions it is not bound by their decisions. The Board must decide this case based on the evidence and

argument before it.

[24] The Board does agree with the Complainant that this property has several unusual restrictions placed on it. Restrictions that would not affect the typical Class A suburban offices. With that said, it also presents a challenge to find market evidence to show if those restrictions affect the market value of the property.

[25] The Board recognises while both the subject and the Airport properties are land leases, the land leases are held by two different levels of government with different sets of rules. As well, the lease terms were different. The airport had lease terms of 25 to 40 years (with a few 55 year terms being negotiated), the subject property has lease term of 81 years set up in 2006. There was not any evidence to indicate undue risk associated with such properties considering the recent sale.

[26] The Board put little weight on the Complainant's comparison of the subject property to industrial warehouses at the airport. First, it was shown that airport warehouses were valued using the sales comparison approach so would not have a capitalization rate. Second, the property types are too dissimilar to draw a reasonable comparison. Most information provided by the Complainant regarding the City's methods to value similar land lease properties at the airport was dated and would carry little weight.


[27] The Board also does not rely on third party capitalization studies; there is no documentation to show how these rates were derived or the properties considered.

[28] The Board did give consideration to Respondent's evidence that showed (in the July 1, 2012 market analysis), for the 2013 assessment the suburban offices at the airport are being valued with the same capitalization rate as the suburban offices across the rest of the city, that being 6.00%.

[29] The *post facto* sale was considered by the Board only in that it does support the 2013 value, but was not relied on to make our decision. The Board notes that there were several interested parties (as stated on the email in the Complainant's evidence), and the RealNet sheet states it was considered a market sale type and was brokered.

[30] The Board found that the value produced for the 2013 assessment was a reasonable estimate of Market Value and the rates provided by the Respondent to be well founded and consistently applied. The assessment is confirmed at \$68,000,000.

DATED AT THE CITY OF CALGARY THIS 20<sup>th</sup> DAY OF September 2013.



K. Thompson

Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
4. R1	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.*

Property Type	Property Sub-Type	Issue	Sub issue
(3) Office	Low Rise	Income Approach	Capitalization Rate