# 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**

***Yegre Quarry Central Ltd..***
***(as represented by Altus Group), COMPLAINANT***

**and**

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

**before**

***L. Yakimchuk, PRESIDING OFFICER***
***R. Cochrane, BOARD MEMBER***
***D. Morice, 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:

| | |
|---|---|
| **ROLL NUMBER:** | **201101839** |
| **LOCATION ADDRESS:** | **115 Quarry Park Rd SE** |
| **FILE NUMBER:** | **72564** |
| **ASSESSMENT:** | **$61,570,000** |

This complaint was heard July 15, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- *D. Chabot, Altus Group*

Appeared on behalf of the Respondent:

- *M. Ryan, City of Calgary Assessor*
- *L. Dunbar-Proctor, City of Calgary Assessor*

**Board's Decision in Respect of Procedural Matter:**

[1] The Complainant requested that MGB Decision 129/02 be removed from the Respondent's document R-1 as the decision had been overturned by Court of Queen's Bench and as such no longer existed.

[2] The Respondent requested that sections of the Rebuttal (C-2) be removed as they are new information and do not respond directly to the City Assessment Brief. He cited specifically C-2, p3 as a new comparable property, and pp39 & 40, City Vacancy Study.

[3] The Complainant argued that the property on C-2, p3 was cited to show a comparison in response to an item in R-1.

[4] The Respondent argued that MGB 129/02 was a context document for the Court decision to establish what the judge's reference was.

[5] The Board decided that all hearing and court documents are available to the Board at all times, therefore striking any from the submissions would not prevent the Board from reading them. The Board took notice that the MGB Decision had been overturned.

[6] The Board decided to allow the rebuttal, and apply weight to the evidence as it was merited. If information was judged to be new, no weight would be applied to it.

**Property Description:**

[7] The subject property has been assessed as an "A+" quality, multi-tenanted suburban office building in Quarry Park. It has 154,947 square feet (sf) of office space and 227 enclosed parking stalls.

**Issues:**

[8] Is the assessed lease rate of this partially completed suburban office too high? Specifically, should the rate be lower to reflect the incomplete areas which had no tenants in the assessment year?

**Complainant's Requested Value: $57,520,000.**

**Board's Decision:**

[9] The Board reduces the assessment to $57,520,000.

**Legislative Authority, Requirements and Considerations:**

The Composite Assessment Review Board (CARB) derives its authority from the Municipal Government Act (MGA) RSA 2000 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 (1)(a).

For the purposes of this hearing, the CARB will consider MGA Section 293(1)

> In preparing an assessment, the assessor must, in a fair and equitable manner,
>
> (a) apply the valuation and other standards set out in the regulations, and
>
> (b) follow the procedures set out in the regulations.

Matters Relating to Assessment and Taxation Regulation (MRAT) is the regulation referred to in MGA Section 293(1)(b). The CARB decision will be guided by MRAT Section 2, which states that

> An assessment of property based on market value
>
> (a) must be prepared using mass appraisal,
>
> (b) must be an estimate of the value of the fee simple estate in the property, and
>
> (c) must reflect typical market conditions for properties similar to that property.

and MRAT Section 4(1), which states that

> The valuation standard for a parcel of land is
>
> (a) market value, or
>
> (b) if the parcel is used for farming operations, agricultural use value.

**Position of the Parties**

**Complainant's Position:**

[10] The Complainant, D. Chabot, Altus Group, described the subject building as a partially incomplete office building (~45% unfinished) in Quarry Park. She stated that in 2012 it was actively leasing, which was supported by signs in front of the building (shown in photograph in document C1 p18).

[11] D. Chabot argued that in the assessment year the vacant portion of the building did not have tenants, therefore the tenant improvements were not in place, nor had any tenant

inducements been paid to tenants. She argued that in the absence of tenant improvements or tenant inducements, that portion of the value of the building was not in place.

[12] The Complainant argued that while she agreed 85,366 sf of finished office space should be assessed at the standard rate for suburban "A+" offices, the remaining 69,581 sf of unfinished office space should be discounted by $3.50/sf for a value of $20.50.

[13] To support the $3.50/sf discount, the Complainant submitted evidence that Tenant Inducements of $35.00/sf over a 10-year term had been applied to leases in the occupied portion of the building. This would result in a $3.50/sf annual rate.

[14] The Complainant provided previous CARB decisions and Court of Alberta Queen's Bench decision ABQB 512 to support the request, as well as photographs of the unfinished interior of the building, taken on or after February 13, 2013. The photographs showed some portions with no interior walls or finish, including no drywall on some exterior walls, and other portions with the first steps of tenant improvements, including drywall on some exterior walls and supporting structure for interior walls.

**Respondent's Position:**

[15] M. Ryan, City of Calgary Assessor, argued that ABQB 512 was misinterpreted and provided Municipal Government Board (MGB) decision 129/02, which was the subject of the Appeal to provide context for his argument. The Respondent argued that the subject of the decision was Capital Improvements as opposed to Tenant Improvements, and did not apply to the subject assessment complaint.

[16] The Respondent argued that many of the leases were signed before spaces were occupied, and rent was being paid for some time before move-in. He submitted rent rolls for other Quarry Park addresses to support this argument (R1 p40). The Respondent argued that if rent was being paid, tenant inducements were already in place.

[17] The Respondent did not provide evidence that leases were in place for the subject property during the assessment year. He did argue that despite the lack of finish, the subject property could achieve full typical income despite the lack of Tenant Improvements.

[18] The Respondent also argued that changing the rental rate would change the Capitalization (Cap) rate from 4.58% to 4.36%. He said that changing any element of the assessment equation would affect the remainder of the elements in that equation.

[19] M. Ryan, upon questioning, confirmed that it is the practice to apply the Cap rate of the largest portion of an improvement to all of the improvement, regardless of the rates applied to the remainder.

[20] M. Ryan stated that the building has an occupancy permit, therefore it is ready for tenancy. Only Tenant Improvements are required prior to occupancy by a tenant. *Tenants can start paying rent on the space when they gain care and control of the space, not necessarily when the tenant improvements are complete.* (R1 p39 [57])

[21] In summation, the Respondent stated that *tenant improvement allowances are a market tool used bylandlords as an incentive for tenants to move in. The landlord recaptures the value of this incentive by either placing step-ups in the tenants' leases, or when the building is sold. The nature of the improvement is to enhance the value of the property, so while the current landlord paid a tenant to put the improvements in place a new landlord purchasing the building will not have any financial burden on those incentives, will value the lease in its entirety, and*

*will not have any financial burden on those incentives, will value the lease in its entirety, and value all the improvements in the building.* (R1 p39 [59]).

**Rebuttal:**

[22] The Complainant demonstrated that "Fixturing Periods", when prospective tenants were allowed to occupy the premises from possession date to commencement date in order to complete improvements to the office premises, were included in lease agreements in similar buildings in Quarry Park. During the Fixturing Period, no rent would be paid.

[23] The Complainant also pointed out that a small proportion of the leases provided by the Respondent showed occupancy dates different from the date the lease was signed, and that the difference in time for those that did was usually a short time that would account for "Fixturing".

**Board's Reasons for Decision:**

[24] The Board considered the leases on the subject property and concluded that there was no evidence shown that 69,581 sf of the building had tenants. The information submitted by both parties indicated that there were no tenants in this portion in the assessment period.

[25] The Board discussed the difference between Tenant Improvements and Capital Improvements and agreed they were different, but that both were assessed. The Tenant portion of Improvements are part of the total assessed value of the property. ABQB 512 clearly states (par[29]): *Another error was made by the MGB in its analysis of "Lease Up Costs" (p.13). The MGB determined that: "...tenant improvements are an assessable part of the realty...". While this is correct, in my view, tenant improvements that do not exist at the time of the assessment cannot be considered assessable; incuding them demonstrates an unreasonable analysis of the evidence.*

[26] The Board is aware that where previous tenants were in place, previous Tenant Improvements exist, and where there is a lease in place, Tenant Inducements for Tenant Improvements have been agreed to. These improvements and inducements would be part of the package a prospective buyer would purchase with an established building and would therefore be assessable.

[27] The Board decided that in the case of this building, there were no tenants in 69,581 sf of space nor had there ever been tenants at the time of assessment, therefore there were no tenant improvements (and never had been improvements) to include in the assessment; nor were there any tenant inducements paid which could be included in the assessment.

[28] The Board noted that the Respondent stated in R1 p39 [59]: *The nature of the improvement is to enhance the value of the property, so while the current landlord paid a tenant to put the improvements in place a new landlord purchasing the building will not have any financial burden on those incentives, will value the lease in its entirety, and value all the improvements in the building.*

[29] The Board found that in the absence of the leases, the absence of the tenant improvements, and the absence of tenant inducements paid to tenants the part of the value that enhanced the value of the property was missing and should be accounted for with a reduction in the rent rate for that portion of the building that was untenanted.

[30] The Board reduced the rent rate for the unoccupied portion of the building by $3.50/sf from $24.00/sf to a value of $20.50/sf.

**DATED AT THE CITY OF CALGARY THIS 1 DAY OF August 2013.**

**Lana Yakimchuk**

**Presiding Officer**

## APPENDIX "A"

## DOCUMENTS PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD:

| NO. | ITEM |
|---|---|
| 1. C1 | Complainant Disclosure |
| 2. R1 | Respondent Disclosure |
| 3. C2 | Complainant Rebuttal |

*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.*

| Appeal Type | Property Type | Property Sub-type | Issue | Sub-Issue |
|---|---|---|---|---|
| CARB | Office | Low Rise | Income Approach | Lease Rate |