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:

1604954 Alberta Ltd. (as represented by Altus Group Ltd), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Glenn, PRESIDING OFFICER
T. Usselman, BOARD MEMBER
D. Julien, 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:	**048039002**
LOCATION ADDRESS:	**1925-18 Ave NE**
FILE NUMBER:	**72829**
ASSESSMENT:	**$52,720,000**

This complaint was heard on Wednesday, the 26th day of June, 2013 at the offices of the Assessment Review Board located on Floor Number 4, at 1212 – 31 Avenue NE, in Calgary, Alberta, in Boardroom 4.

Appeared on behalf of the Complainant:

- Danielle Chabot, Agent
- Vassilis Frangolis, Agent

Appeared on behalf of the Respondent:

- Christina Neal, Assessor
- Mike Ryan, Assessor

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

[1] When asked, neither party raised any issues with regard to either Jurisdiction or, Procedure in this matter.

Property Description:

[2] The subject is a 4.47 acre parcel of land with an A+ suburban office building built in the year 2009 on the site, located in Vista Heights in NE Calgary and comprising 194,044 SF. It is assessed as a suburban office at $52,720,000 using the income approach.

Issues:

[3] The Complainant is requesting that the rental rate of a 29,489 SF area (mostly on the first floor) of the subject property should be reduced to $13/SF. The Complainant suggests that the rental rate of this area should be reduced because it is not finished, and as such, it is in an unusable state.

Complainant's Requested Value: $ 50,360,000

Board's Decision: To reduce the subject assessment to $50,360,000

Complainant's Position:

[4] The Complainant argues that while the subject was assessed as 100% complete, there are pockets of the subject space that are not complete. As a basis for their argument, the Complainant relies heavily on the decision of Justice Acton in **697604 Alberta Ltd v Calgary, (City of), 2005 ABQB 512,** noting paragraphs 27 and 29 specifically:

basis. Circumstances could easily have arisen in which the improvements might never have been done. In my view, it was reasonable for the MGB to speculate about what might happen in the future, for example, renovating the premises, in order to determine value in the past.

[29] Another error was made by the MGB in its analysis of "Lease Up Costs" (p13). 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; including them demonstrates an unreasonable analysis of the evidence.

[5] The Complainant goes on to provide photographs of some space in the subject which has been built up, and also, of the unimproved space. The Complainant provided copies of leasing advertisement information for the subject indicating that an improvement allowance is offered as part of the leasing package for the subject property, and demonstrating that the owners are attempting to lease out the subject vacant areas.

[6] In addition, the Complainant provides a CARB decision (CARB 0931-2012-P) which demonstrates that the City has in past years provided a reduction on a $5 per square foot basis for unfinished office space. The Complainant suggests that they are simply seeking an acknowledgement of the undeveloped space. On rebuttal, the Complainant presents CARB decisions (notably, CARB 2632-2011-P) which demonstrate that the Respondent has in the past admitted that developed and undeveloped properties have had different rental rates.

[7] In summary, the Complainant argues that the Respondent has presented no evidence to show why everyone who has relied on the Acton decision "got it wrong". Therefore, they say, the Acton decision should be applied here, and the requested reduction granted.

Respondent's Position:

[8] The Respondents argue that the issue is market value, not "value to the owner". They argue that the Acton decision (supra), is either wrong, or, if it is correct, it is being quoted out of context in the Complainant's argument. They say that Capital Improvements and Tenant Improvements are not the same thing, and further, the Acton decision confuses them and therefore it is easy to misunderstand. They say that it is up to the tenant to make the improvements, and so, the subject areas in issue should be assessed at full market value, notwithstanding their being "unimproved".

[9] The Respondent's position is that the Acton decision should not be relied on, because it deals only with Tenant Improvements. The Respondents seem to feel that the decision should deal with Capital Improvements also. When the Respondents were queried as to why they felt the Acton decision is incorrect, they say that it is because there should be the same rental rate for both finished and unfinished office space, and the Acton decision does not support that concept. The Respondent further argues that all of the decisions which the Complainant relied on are for supplementary assessments.

[10] The Respondent went on to argue that when the City issues the first occupancy permit for a building, the City considers the property complete and at full value for assessment purposes. In other words, they say, to be complete, a property does not need to be occupied; it just has to be ready for occupation. They also say that Tenant's Improvements are a part of the tenancy agreement, and are not necessary for a building to be considered complete.

[10] The Respondent based their argument on Section 314(2) of the Act which states that the improvements are to be assessed by supplementary assessment if the improvements are completed, occupied, or, moved into the municipality during the year in which they are to be taxed.

[11] Notwithstanding the argument earlier raised in their brief, the Respondents did not raise the issue of any court decisions in favour of their point of view, other than commenting on the Acton decision.

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

[12] The evidence of the Complainant was generally well organized and presented. The evidence of the Respondent mainly disagreed with the Complainant's position. The Respondent's interpretation of section 314(2) of the Act was questionable. They say that the key to interpreting this section of the legislation is that the Legislature intended the section to be read as: when the property was "completed or occupied or moved into".

[13] The decision of Justice Acton clarifies this point. The decision suggests that an assessment cannot be done on an anticipatory basis. Further, tenant improvements that do not exist at the time of the assessment are not assessable.

[14] The Board finds that the fact pattern in the Acton decision is very close to the instant fact situation. Regardless of the City's purported policy that when the first occupation permit issues, the whole building is considered ready for occupancy, and therefore assessable at the normal rate, the Acton decision is seemingly much more fair and even-handed.

[15] The Respondent presented nothing to suggest that the Acton decision has not been accepted by any other courts, nor has it been appealed. The argument of the Respondent does not overcome the reasoning in the Acton decision. The Board finds that the assessment based on the supposition that all of the subject is deemed to be occupied, is excessive. It is therefore necessary to reduce the assessment of the subject space.

Board's Decision:

[16] The a-ssessment for the subject area in issue (a total of 29,489 SF) is herewith reduced by a factor of $5.00/SF. Ultimately then, the total assessment is reduced to $50,360,000.

DATED AT THE CITY OF CALGARY THIS 26th DAY OF July, 2013.

R. Glenn
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 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.