

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:

HCR LP (CP Calgary) Inc. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER
P. Charuk, BOARD MEMBER
K. Farn, 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 NUMBERS:	201578770 201578762
LOCATION ADDRESSES:	300 – 4000 – 4 ST SE 200 – 4000 – 4 ST SE
FILE NUMBERS:	73695 73696
ASSESSMENTS:	\$23,460,000 \$13,090,000

These two complaints were heard simultaneously on the 9th day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *J. Weber – Altus Group Ltd. - Complainant*

Appeared on behalf of the Respondent:

- *D. Zhao – Assessor – City of Calgary*

Regarding Brevity

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] The parties informed the Board that they would prefer that these two files be heard together because the evidence and argument would be highly similar, if not identical for each property. The Board concurred in this request.

Property Description:

[3] The subjects are two low-rise multi-storey suburban office buildings on two separately-identified bareland condominium unit land parcels in a larger condominium plan of subdivision. The two parcels are situated between 4 ST SE and Blackfoot Trail SE, directly opposite and west of Cash Casino and north of 42 AV SE. The subjects are located in the Manchester industrial area at municipal addresses #300 and #200 – 4000 – 4 ST SE respectively. The subjects are considered to be A+ quality suburban office buildings and are therefore assessed using the "Income Approach to Value" methodology at \$21 per SF for the office space.

[4] Building #300 is bareland condominium unit #2. It was constructed in 2011 and contains 68,866 square feet (SF) of assessable office space, and 65 enclosed (underground) parking stalls. It is situated on a 2.76 acre (Ac.) condominium unit and is assessed at \$23,460,000.

[5] Building #200 is bareland condominium unit #1. It was constructed in 2008 and contains 38,926 SF of office space and 12,071 SF of storage. It is situated on a 1.59 Ac. condominium unit and is assessed at \$13,090,000.

Issue:

[6] What is the correct per SF value for suburban office space to be applied to the calculation of assessed value for each of the subject buildings using the Income Approach to Value methodology?

Complainant's Requested Value:

[7] The Complainant requested that the assessment for building #300 be reduced to \$22,370,000 based on \$20 per SF for the office rent rate.

[8] The Complainant requested that the assessment for building #200 be reduced to \$12,480,000 based on \$20 per SF for the office rent rate.

Board's Decision:

[9] The Board confirmed the assessments as follows:

- a) for building #300 - at \$23,460,000.
- b) for building #200 - at \$13,090,000.

Legislative Authority, Requirements, and Considerations:

[10] Under the *Municipal Government Act* (MGA), the Board cannot alter an assessment which is fair and equitable.

[11] MGA 467 (3) states:

"An assessment review board must not alter any assessment that is fair and equitable, taking into consideration the valuation and other standards set out in the regulations, the procedures set out in the regulations; and the assessments of similar property or businesses in the same municipality."

[12] The Board examines the assessment in light of the information used by the assessor and the additional information provided by the Complainant. The Complainant has the obligation to bring sufficient evidence to convince the Board that the assessment is not fair and equitable. The Board reviews the evidence on a balance of probabilities. If the original assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the Board will not alter the assessment. Within each case the Board may examine different legislative and related factors, depending on what the Complainant raises as concerns.

Positions of the Parties**(a) Complainant's Position:**

[13] The Complainant provided his brief C-1 and introduced the location and appearance of the two subjects using maps and recent aerial and ground level photographs of each of them. He also provided copies of civic assessment information sheets, as well as copies of the Respondent's calculations of assessed value for each of the sites. He noted that in the case of both buildings #300 and #200, the Respondent had calculated their respective assessed values using \$21 per SF for the office space. Other valuation parameters were applied to the assessment calculations for the underground parking and storage components of the two buildings respectively.

[14] The Complainant provided two separate and alternate Income Approach to Value calculations for each of the two subjects using \$20 per SF for the office space instead of the assessed \$21 per SF. He argued that while he agreed with the City's methodology of using the Income Approach to Value, he disagreed that using \$21 per SF as a typical value for the office space was reasonable. He also argued that the year-over-year assessment increase of approximately 60% for each of the two subjects is also unreasonable.

[15] The Complainant argued that it was possible to change the assessed "typical" value of \$21 per SF in the assessment calculation to \$20 per SF without any effect on the capitalization rates applied to the subjects in those calculations. He also clarified that he was relying on an "Altus Lease Rate Study" of selected current 2011 and 2012 A+ Class suburban office rent rates which identified \$20 per SF as the median (typical) rate representative of such space in the market. The study was provided on page 25 of C-1 and listed fifteen selected leases for a variety of space sizes from seven A+ Class suburban office buildings in various locations in SE Calgary. It identified a median value of \$20.00 per SF; an average value of \$20.10 per SF; and a weighted average of \$19.46 per SF.

[16] The Complainant provided copies of the City's assessment calculations for, and exterior photographs of, each of the seven buildings used in the "Altus Lease Rate" study. He argued that the seven suburban office buildings used in the Altus study are very comparable in terms of age and function to each of the two subjects. He clarified that the City had used the same property comparables in its calculations of "typical" rent values in such buildings. He also argued that the Altus study demonstrates that \$20 per SF is the correct value to be applied to the office space portion of the assessment calculations for the two subjects and not the assessed \$21 per SF.

[17] The Complainant provided copies of Calgary Composite Assessment Review Board (CARB) decisions 72128P-2013 and 73137P-2013. He noted on pages 48 and 54 of C-1 that previous Boards had rejected four of the City's property comparables used in its lease rate study for A+ suburban office buildings. He clarified that while the Respondent has removed two of the four properties and re-calculated the resultant values for this hearing, the City's study is still flawed and unreliable.

[18] The Complainant clarified that several existing current and valid leases in the subjects contained certain "incentives" to attract and retain tenants, and therefore their lease values cannot be relied upon as indicators of typical market value for such office space. He argued that while the Respondent typically ignores such inducements in its calculations of assessed value, this is a flawed approach.

[19] The Complainant noted that the Respondent must assess properties using the Mass Appraisal process. He noted that legislatively the Respondent is required to develop an assessed value for a property that is within an acceptable range of 0.950 to 1.050 of market value. The Complainant argued that while he is requesting an overall reduction in assessed value for each of the two subjects which is in the range of approximately - 4.6%, there is no legislative bar to an assessment reduction that is less than 5%.

(b) Respondent's Position:

[20] The Respondent provided his brief R-1 containing maps, photographs, assessment details and calculation sheets for the two subjects. He argued that the \$20 per SF instead of the assessed \$21 per SF as requested by the Complainant for the office space in the subjects, is based on faulty analysis of City data. He confirmed that he had adjusted his matrix of supporting lease comparables for this hearing, because two previous CARB Boards rejected four of the City's leases while considering this same issue. Two of the four questionable leases he discarded were one each for 815 MacDonald AV SE and 15 Sunpark PZ SE.

[21] Consequently the Respondent referenced page 28 of R-1 and a matrix of seventeen 2011 and 2012 lease samples from eight A+ suburban office buildings. He noted that based on this list of leases, the Mean value was \$20.62 per SF; the Median was \$22.00 per SF; and the Weighted Mean was \$20.59 per SF. He argued that this list of lease examples from comparable A+ Class suburban office buildings supported the "typical" lease value of \$21 per SF used to assess not only the subject, but all similar A+ Class suburban offices.

[22] The Respondent clarified that notwithstanding a previous Board's questioning of them, he had opted to retain the lease samples from properties at 4000 - 4 ST SE - properties which are the subject of this hearing. He clarified that these leases had been rejected by previous Boards (see paragraph [17] above) because of certain lease incentives within them. He noted on page 26 of R-1 that the leases in these buildings demonstrated values slightly higher than \$23 per SF (e.g. \$23.50 per SF), whereas they were assessed at a typical \$21 per SF.

[23] The Respondent clarified that when the City analyzes lease data in its preparation of "Property" assessments, it does not, has not, and should not discard leases containing certain incentives between owner and tenant. He considered that all leases, whether incentive laden or not, are important considerations for arriving at market value. He noted that this is contrary to the assertions of the Complainant that the City should do so. However, he clarified that the while the City does in fact discard incentive-laden leases when determining values for "Business" assessment values, it does so for reasons that are different than those applicable to "Property" assessments.

[24] On pages 19 to 25 of R-1 the Respondent provided the City's 2012 Assessment Request For Information (ARFI) documents for each of the two subjects. He also provided the rent rolls for each of the two properties. He noted that the ARFI for property #200 – 4000 – 4 ST SE lists seven 2009 to 2012 leases with values ranging from \$19 per SF to \$25 per SF, with four leases over \$22 per SF. He also noted that the ARFI for #300 – 4000 – 4 ST SE lists three 2011 leases showing values from \$22 to \$23.50 per SF – all greater than the assessed \$21 per SF. He argued that this evidence supports the assessment of the office space in the two subjects on the basis of a typical \$21 per SF.

[25] The Respondent clarified that while he concurs with the Complainant that the City must use Mass Appraisal to assess properties, and the industry and provincially-accepted "margin of error" is 0.950 to 1.050, generally-accepted practice is to consider that property assessments falling within this range, meet the "test" for compliance. Therefore he argued, unless the assessment is deemed to be incorrect, to reduce the assessment of the subjects by only 4.6% would be improper and erroneous and generate assessment inequities among similar properties. He suggested that there is "Case Law" regarding this point but he did not provide the Board with documentary evidence of same.

[26] The Respondent provided excerpts of relevant legislation from "*Alberta Regulation 220/2004 Matters Relating To Assessment and Taxation Regulation*" (MRAT). In particular he referenced *Section 10(3)* of MRAT on page 37 of R-1 which states:

(3) For any stratum of the property type described in the following table, the quality standards set out in the table must be met in the preparation of assessments:

Property Type	Median Assessment Ratio	Coefficient of Dispersion
Property containing 1, 2 or 3 dwelling Units	0.950 - 1.050	0 - 15.0
All other property	0.950 - 1.050	0 - 20.0

[27] The Respondent noted on page 37 of R-1 that:

"It is significant that the regulation does not state that every sale must fall within the regulated ratio but that the stratum of the property type must fall within the regulated ratio. There will be individual sales that have an assessment ratio lower than 0.950 or higher than 1.050

[28] From pages 46 to 69 of R-1 the Respondent provided several CARB decisions to support his various positions in this appeal. He also provided a copy of CARB 72395P-2013. He argued in conclusion that the assessment of the two subjects are correct, fair, and equitable and requested the Board to confirm their respective assessments.

Board's Reasons for Decision:

[29] The Board finds that the Respondent's matrix list of seventeen comparative "actual" lease values for suburban office space, supports the assessment of the subject at \$21 per SF. The median value of the leases is \$22 per SF whereas the subjects are assessed at a "typical" \$21 per SF.

[30] The Board finds that the ARFI documents from each of the subjects as provided by the Respondent demonstrate that the subject is achieving rents for office space which are predominantly in excess of the assessed "typical" value of \$21 per SF.

[31] The Board finds that the photographic and assessment calculation evidence adduced at this hearing by both parties, demonstrates to the Board that the property comparables used in the various analyses are similar to the subject. Therefore, the lease values gleaned from these properties support the assessment.

[32] The Board finds that a year-over-year assessment increase or decrease in assessed value is not, in and of itself, sufficient reason to change an assessment.

[33] The Board finds that the Complainant provided insufficient information to demonstrate that the assessment is incorrect, and it should therefore be adjusted downward by 4.6% to correct it as requested by the Complainant.


[34] The Board accepts the Respondent's arguments that as a matter of consistent practice, and for "property" assessments only, the Respondent does not discard leases which contain "incentives", and hence such leases may be validly included in its analysis of the market.

[35] The Board finds that while the parties provided several Board decisions in support of their respective positions, and the Board does not ignore them, it is not bound by those decisions. The Board makes its decision based on the evidence and argument heard at this hearing.

[36] The Board finds that the Complainant provided insufficient information to demonstrate to the Board that the assessment is unfair, inequitable, or incorrect.

[37] The Board finds that the assessment of the subject by the Respondent meets the requirements of Section 10(3) of *"Alberta Regulation 220/2004 Matters Relating To Assessment and Taxation Regulation" (MRAT)*

DATED AT THE CITY OF CALGARY THIS 30th DAY OF October 2013.


K. D. Kelly
Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C-1	Complainant Disclosure
2. R-1	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.*

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Suburban office	Condominium unit	market value	Lease rate