



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:

**582276 Alberta Inc.
(represented by Altus Group), COMPLAINANT**

and

The City Of Calgary, RESPONDENT

before:

**Ms. V. Higham, PRESIDING OFFICER
Mr. J. Kerrison, BOARD MEMBER
Mr. J. Massey, BOARD MEMBER**

This is a complaint to the Calgary Assessment Review Board (the Board) in respect of a property assessment prepared by the Assessor of The City of Calgary (the City) and entered in the 2014 Assessment Roll as follows:

ROLL NUMBER:	156118606
LOCATION ADDRESS:	259 Midpark Wy SE Calgary, Alberta
FILE NUMBER:	74548
ASSESSMENT:	\$8,170,000

This complaint was heard on August 12, 2014 at the office of the Calgary Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta, 4th Floor, Boardroom 5.

Appeared on behalf of the Complainant:

- **Mr. B. Neeson** **Agent, Altus Group**

Appeared on behalf of the Respondent:

- **Mr. R. Tharakan** **Assessor, City of Calgary**
- **Mr. M. Ryan** **Assessor, City of Calgary**

Procedural or Jurisdictional Matters:

- [1] Neither party objected to the composition of the Board as introduced at the hearing.
- [2] The Board notes an executed Agent Authorization Form present in the file.
- [3] All disclosure materials were received in a timely fashion.
- [4] No preliminary issues were raised by either party.

Property Description:

[5] The subject is assessed as a B quality, low rise suburban office property (CS0302), located at 259 Midpark Way SE on 1.66 acres of land. The parcel is improved by one building comprising 46,568 square feet (sf) of space (31,105 sf office and 15,463 sf rec), assessed on the income approach to value, with an applied office rental rate of \$17 per square foot (psf), a recreational (rec) rate of \$10 psf, and a capitalization (cap) rate of 7% (not under complaint).

Issues:

[6] The Complainant identified one matter on the Complaint Form as under complaint, being the assessment amount. At the hearing, the Complainant requested a different assessment amount (\$6,760,000) than originally noted on the Complaint Form (\$7,360,000), and raised the following two issues for the Board's consideration:

- 1) What is the appropriate rental rate psf to apply to the office space in the subject property: the assessed \$17 or the requested \$16?
- 2) What is the appropriate rental rate psf to apply to the rec space in the subject property: the assessed \$10 or the requested \$5 psf?

Complainant's Requested Value: \$6,760,000

Board's Decision: The Board varies the subject assessment from \$8,170,000 down to a truncated value of **\$7,160,000**.

Legislative Authority, Requirements and Considerations:

[7] A Composite Assessment Review Board (CARB) derives its authority from the *Act*, section 460.1, which reads as follows:

- (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).

Section 293 of the *Act* requires that:

- (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.

Sections 2 and 4 of the *Matters Relating to Assessment and Taxation Regulations* (the *MRAT*) state:

- (2) 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.
- 4(1) 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

Issue #1: What is the appropriate rental rate psf to apply to the office space in the subject property: the assessed \$17 or the requested \$16?

Complainant's Position:

[8] The Complainant submitted a rental study analysing 9 leases of B quality properties (all within the subject building), with median/mean/weighted mean rates of \$16 and \$15.98, and \$15.93 psf respectively, over a 24 month period dating back from the July 1, 2013 valuation date. The Complainant based his request of \$16 psf on the median of this analysis.

[9] The Complainant argued that in this case, the nine leases within the subject constitute the best indicator of typical market conditions for the subject property as of the valuation date, July 1, 2013.

Respondent's Position:

[10] The Respondent submitted the City's rental study analysing 12 leases of B quality properties in the Midnapore south east region, with median/mean/weighted mean rates of \$17, \$16.46 and \$16.64 psf respectively, over a one year period dating back from the July 1, 2013 valuation date.

[11] The Respondent's leases were all drawn from properties in the immediate vicinity of the subject on Midpark Way or Boulevard, including two leases from the subject building at \$17 and \$18 psf respectively.

[12] The Respondent objected to the Complainant's reliance solely on actual rental rates within the subject, with no evidence submitted relative to other similar properties to establish a typical value applicable to all properties within that category.

[13] The Respondent argued that given its mandate to estimate typical market value using mass appraisal valuation factors, the City's study better reflects typical market value for the subject, since it includes a sample of lease rates for similar properties in the subject's immediate vicinity.

[14] The Respondent also submitted several CARB decisions (CARB 1169/2011-P, CARB 2049-2012-P, CARB 70912P-2013, CARB 72040/P-2013, and CARB 0861/2010-P, CARB 1069/2010-P, CARB 1072/2010-P, and CARB 1094/2010-P) to support his position that for assessment purposes, a typical rental rate is best derived by analysing a range of similar properties, rather than a limited sample of actual values.

Issue #2: What is the appropriate rental rate psf to apply to the rec space in the subject property: the assessed \$10 or the requested \$5 psf?

Complainant's Position:

[15] The Complainant submitted evidence indicating that the rec space in the subject property rents out to Fish Creek Racquet and Fitness Club (the Club) for a flat rate of \$5,000 per month (or \$3.88 psf) for the 15,463 sf of space. The Complainant also submitted pictorial evidence indicating that access to this rec space is located on the east side of the building, at what appears to be lower grade than the main entrance to the office building, in a manner of "walk-out" style design.

[16] The Complainant additionally submitted several comparable rec leases: a 21,141 sf gym facility at the Deerfoot Mall renting at \$5 psf, and five leases in the City's "Citywide Basement Recreational Space Lease Analysis: All Qualities" for spaces ranging from 3,131 to 17,854 sf, with median/mean rates of \$5.50 and \$5.87 psf respectively.

[17] The Complainant argued that the Respondent's rec lease comps are not comparable because they are all above grade rec facilities, most of which are in A quality buildings with considerably smaller square footage than the subject. There was only one B quality lease in the City's rec study, and it is an expired four-year lease executed at \$13 psf in September 2008.

[18] The Complainant also noted that all of the rec spaces in the City's study combined (14,891 sf) are still not as large as the subject rec space (15,463), arguing that the principle of "economies of scale" applies irrespective of property type, and typically dictates a lower rate psf as building area increases. Thus, the Complainant argued that his requested rental rate for the large rec space of the subject property is supported by the lease evidence.

Respondent's Position:

[19] The Respondent submitted the City's "2014 Suburban Office Lease Analysis: Rec Space" study which analysed seven rec leases of mostly A quality properties (one B and one C) across the entire city, over a 5 year valuation period dating back from July 1, 2013. Median/mean/weighted mean rates for this study were \$10, \$12.43, and \$14.68 psf.

[20] The Respondent objected to the Complainant's inclusion of basement rec space leases, since all of these comps are retail and not commercial spaces, and since no evidence was submitted to establish that the subject's rec space is in fact below grade. The Respondent also objected to the Deerfoot Mall comp noting that it too is a retail and not commercial space.

BOARD'S FINDINGS AND REASONS:

[21] The Board finds that the appropriate rental rates to apply to the subject are: the assessed \$17 psf for the office space and the requested \$5 psf for the rec space, based on the evidence submitted.

Office Rental Rate – Actuals versus Typical:

[22] The Board finds that the Complainant erred in requesting a rental rate variance based on nothing but *actual* lease rents obtained from the subject property, while at the same time accepting the City's other *typical* income factors (cap and vacancy rate, operating costs, non-recoverables) derived from a sample range of similar properties.

[23] The Board in CARB 1169/2011-P reviewed a similar fact scenario in that case and concluded that:

The regulation is clear. In preparing an assessment in Alberta, an assessor must use mass appraisal, and ensure that the assessment so prepared reflects typical market conditions. The goal of the assessment process is an *estimate* (Board's italics) of the value of the fee simple estate in the property. "Typical market conditions" does not mean actual rental rates in a specific property. It means rental rates derived from a range of similar properties.

[24] The governing legal authority on the principle of not mixing actuals with typicals is a British Columbia Supreme Court decision, *Westcoast Transmission Co. v. Vancouver Assessor, Area No. 9 [1987] B.C.J. No. 1273 (Westcoast)*, wherein was stated:

It is common ground that the income approach is an appropriate and, except in unusual circumstances, the most appropriate method of assessing the actual value of commercial property such as that under consideration here. ...

For this process to work, it is evident that the appraiser must make some choices about the concepts to be used, and then to use them consistently. ...I stated above that the concepts used, in developing capitalisation rates for application to the subject, should be used consistently. [emphasis added]

[25] While the justice in *Westcoast* referred to the development of cap rates, the same principles apply to the development of a typical rental rate, as well as all other income factors used in the income approach to derive mass appraisal assessments.

[26] The Complainant's requested typical rental rate is based solely on *actual* rents within the subject property, combined with the City's other *typical* income factors, violating the principle of consistency enunciated in *Westcoast*.

[27] While there may be times when it may be acceptable to derive a typical rental rate based solely on actuals within a certain property, those instances are exceptions to a general rule when similar comparable properties do not exist in the market for one reason or another. It is conceivable, for example, that a power shopping centre or massive commercial operation may "be the market" for that classification of properties in the city for that particular assessment year.

[28] In the subject hearing, however, the City's study analysed 12 properties over a one year period, persuading the Board that sufficient comparables exist, and ought to have been reviewed, to derive the typical rental rate.

Rec Space Rental Rate:

[29] The Board finds that the leases in the City's rec space study are too small, dated, and dissimilar by virtue of building quality to be reasonably comparable to the subject's large rec space.

[30] With respect to the basement rec study submitted by the Complainant, the Board finds that the exterior photographs provided by both parties are alone inconclusive of whether the subject's rec area is definitively "basement" space or not. On a balance of probabilities, however, it seems unlikely to the Board that a racquetball facility could be accommodated on the grade level of the Club's entrance, since racquetball courts require enhanced ceiling heights of 15 feet or more, certainly not evident from the photographs submitted.

[31] The Board finds that the fitness facility at Deerfoot Mall, while a retail lease comp, is more comparable by virtue of its size alone, accounting for economies of scale.

[32] Thus, the Board is persuaded that the Complainant's evidence better reflects an estimate of market value for the rec space of the subject property, accepting the Complainant's requested \$5 psf rate.

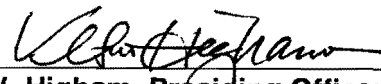
Conclusion:

[33] Thus, the Board finds that the best indicator of market value for the subject property is derived by applying the assessed \$17 psf rental rate to the subject's assessable office area of 31,105 sf, and the requested \$5 psf rental rate to the subject's assessable rec space of 15,463 sf (plus non-contested income factors of 7% cap rate, 8% vacancy rate, \$13.50 operating costs, and 1% non-recoverable), resulting in a truncated value of \$7,160,000.

Board's Decision:

[34] For reasons outlined herein, the Board confirms the office rental rate at \$17 psf, and varies the rec rental rate from \$10 down to \$5 psf, for an overall reduction to the subject assessment from \$8,170,000 down to a truncated value of **\$7,160,000**.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF September 2014.


V. Higham, Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's 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.*

For Administrative Use Only – Roll Number 156118606

Municipal Government Board Use Only: Decision Identifier Codes				
Municipality/Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
Calgary CARB	Office	Low Rise	Income	Net Market Rent/Lease Rate