



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:

ONTREA Inc
(as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

B. Horrocks, PRESIDING OFFICER
M. Bruton, BOARD MEMBER
T. Usselman, 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 2014 Assessment Roll as follows:

ROLL NUMBER:	068031004
LOCATION ADDRESS:	400 4 AV SW
FILE NUMBER:	75693
ASSESSMENT:	\$356,100,000

This complaint was heard on the 25th day of August, 2014 in Boardroom 5 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- D. Hamilton (Altus Group Limited)

Appeared on behalf of the Respondent:

- J. Young (City of Calgary)
- D. Grandbois (City of Calgary)

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

- [1] There were no concerns with the Composite Assessment Review Board (CARB) as constituted.
- [2] The parties have visited the site and discussed the file.
- [3] There were no preliminary matters. The merit hearing proceeded.

Property Description:

[4] The subject property is a 1.50 acre parcel located in the NON RES DT1 Sub market area in the downtown commercial core of Calgary. The site is improved with a 33 storey high rise office building known as Shell Centre. The building has a typical floor plate area of 21,142 square feet (sf) and a total building area of 688,504 sf. In addition to 634,274 sf of office space, the building contains 21,883 sf of retail space on the main and second floors, 22,312 sf of recreational space, 306 sf for an automated teller and 9,729 sf of storage. There are 86 parking stalls in an underground parking garage. The building was constructed in 1976, is connected to the "Plus 15" network and is classified as A2 quality.

[5] The 2014 assessment was prepared using the Income Approach to Value, with a typical office space rental rate of \$31.00 per square foot (psf), typical retail space rental rate of \$27.00 psf, typical recreational space rental rate of \$18.00 psf, typical storage space rental rate of \$10.00 psf, typical ATM space rental of \$150.00 and parking at \$6,000 per stall. Vacancy and non-recoverable expense allowances were deducted. The resulting net operating income was capitalized at the rate of 5.75% to arrive at an estimate of market value for assessment purposes that was truncated to \$356,100,000.

Issues:

[6] An assessment amount was identified on the Assessment Review Board Complaint Form as the matter that applies to the complaint. At the outset of the hearing, the Complainant advised that there was one outstanding issue, namely; market net rental rate for office space.

Complainant's Requested Value: \$302,640,000 (Complaint Form)
\$340,050,000 (Hearing)

CARB's Decision:

- [7] The 2014 assessment is confirmed at \$356,100,000.

Legislative Authority, Requirements and Considerations:

The CARB derives its authority from the Act, Section 460.1:

- (2) *Subject to section 460.1(1), 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).*

The Act requires that:

- 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) requires that:

- 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*

CARB's Decision in Respect of Each Matter or Issue

Issue: What is the typical market net rental rate for office space to be used in the Income Approach to Value to determine the market value, for assessment purposes?

Complainant's Position:

[8] The Complainant's Disclosure is labelled C-1.

[9] The Complainant submitted that it was relying on 2014 Local Assessment Review Board (LARB) Business decisions as a foundation to support its request for an assessed office rental rate of \$29.50 psf. The Complainant submitted that the Respondent's sample size for determining the typical office lease rate for office towers in this class is too small and that to obtain a more representative and reliable sample of market leasing activity, the sample size should be increased by expanding the analysis period to include leases with commencement dates in the Q2, 2012 time period.

[10] The Complainant, on pages 110 through 129, provided LARB 74398B-2014 and LARB 74410B-2014 noting that "to balance the somewhat conflicting interests of obtaining an increased, but current sample" for AA class downtown office and AA- class downtown office space, the LARB had selected leases from the five most recent quarters preceding the July 1, 2013 valuation date. The Complainant submitted that it had used the same methodology to prepare its 2014 Class A office space lease analysis.

[11] The Complainant, on page 131, provided Table 5 noting that the Respondent's Class A 2014 Lease Study contained eighty five (85) leases representing total net rentable area (NRA) of 1,048,597 sf. The Complainant submitted that the addition of Q2, 2012 leases would increase the number of leases to 109 and the NRA to 1,229,096, and reduce the weighted mean lease rate from \$30.33 psf to \$29.58 psf. The Complainant requested a lease rate of \$29.50 psf be applied in the Income Approach to Value to determine the market value for assessment purposes.

[12] The Complainant, on page 139, provided a table titled 2014 A DT1,8 OFFICE RENTAL SUMMARY as prepared by the Respondent. The table contains details of eighty six (86) leases with lease commencement dates in the period July 1, 2012 to July 2, 2013. The lease rates range from \$14.00 psf to \$46.00 psf with a weighted mean lease rate of \$31.02 psf. The Complainant submitted the Summary includes four (4) leases that commenced on July 1, 2013, that should not be included.

[13] The Complainant, on pages 152 to 154, provided a table titled DOWNTOWN OFFICE NET RENTAL RATES noting there are three (3) leases that were missed by the Respondent in its Summary that should be included. The Complainant concluded that if the 4 leases that commenced on July 1, 2013 were excluded in the Summary and the 3 leases that were missed were included in the Summary, the remaining 85 leases would yield a weighted mean lease rate of \$30.33 psf. In response to a question, the Complainant advised that if the 4 leases that commenced on July 1, 2013 were not excluded in the Summary, the weighted mean lease rate would be \$30.39 psf. The calculation was not challenged by the Respondent.

[14] The Complainant, on page 276, provided a table titled DOWNTOWN OFFICE RENTAL RATES. The table contains details of twenty four (24) leases with commencement dates ranging from April 1, 2012 to June 1, 2012 (Q2, 2012). The Complainant concluded that if the evaluation period was expanded to include those leases the resultant 109 leases would yield a weighted mean lease rate of \$29.58 psf, in support of its request for an assessed lease rate of \$29.50 psf.

Respondent's Position:

[15] The Respondent's Disclosure is labelled R-1.

[16] The Respondent, on pages 125 through 127, provided a table titled 2014 A DT1&8 Office Rental Analysis. The table contains details of 85 leases with commencement dates in the period July 1, 2012 to July 1, 2013. The lease rates range from \$14.00 psf to \$46.00 psf with a weighted mean lease rate of \$31.20 psf. The Respondent acknowledged that the table contains 4 leases with commencement dates on July 1, 2013. The Respondent noted that the lease rate applied in the 2014 assessment was \$31.00 psf.

[17] The Respondent referred to the Complainant's request to include 3 "missed" leases noting they were excluded because CARB74665P-2014 had found that the leases were agreed to in 2011 which is outside the evaluation period.

[18] The Respondent, on page 106, provided a table titled Recent Sales Transaction Compared with Altus 2014 Parameters. The table compares the assessment to sale ratio (ASR) of 5 sales to the Predicted ASR of those same 5 sales if the Complainant's requested rental rate was utilized. The Respondent's ASRs ranged from 0.99 to 1.04 and the median ASR was 1.00 while the Predicted ASRs ranged from 0.87 to 1.00 and the median Predicted ASR was 0.96. The Respondent concluded the assessed rental rate produced a superior result.

Complainant's Rebuttal Position:

[19] The Complainant's Rebuttal is labelled C-3.

[20] The Complainant submitted that CARB74665P-2014 erred by not including the Nu Vista lease in its analysis and that ARB 0586/2010-P had included "new leases with a start date occurring during the subject one year assessment cycle". Further, the Respondent has included other leases in its rental study that were agreed to prior to the assessment period.

CARB's Findings:

[21] The CARB finds the Respondent's sample size more than adequate for determining a typical office rental rate. The eighty-five (85) leases included in the Respondent's office rental analysis represent approximately 10% of the available 'A' class office space in DT1. The four (4) leases with start dates of July 1, 2013 should be included in the analysis. The lease rates range from \$32.00 psf to \$39.00 psf and if examined separately are likely a good indicator of the range of market value on the evaluation date. The 85 leases produce a weighted average lease rate of \$31.20 psf which supports the assessed lease rate of \$31.00 psf. The 3 leases identified by the Complainant as missed should be included in the analysis as the commencement dates fall within the time period of the rental rate analysis. The resulting weighted mean lease rate would be \$30.39 psf which still supports the assessed rate of \$31.00 psf.

Issue: Should the 2014 assessment be increased to \$360,000,000?

Respondent's Position:

[22] The Respondent, on page 16, provided the RealNet report of a sale of 400 4 AV SW, the subject property, noting "the total consideration of \$180,000,000 was for a 50% interest in the property which represents a 100% equivalent sale price of \$360,000,000".

[23] The Respondent, on page 18, provided the sale Assessment Request for Information (ARFI) noting the purchaser indicated the sale price was agreed to on June 25, 2013, the sale was an 'arms-length' transaction and that the sale price was based on the property's NOI.

[24] The Respondent submitted that the subject property sold on July 24, 2013 and that even though the sale was post facto, it is the best indicator of market value and as a result the assessment should be increased to \$360,000,000.

[25] The Respondent, on page 53, provided Citation: 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512, wherein Honourable Madam Justice L. D. Acton stated at [24] In my view, the MGB's failure to rely on the evidence of value provided by the recent sale of the Property fails to meet the test of reasonableness. I agree with the following comments from **Re Regional Assessment Commissioner, region No. 11 v. Nesse Holdings Ltd. et al.** (1984), 47 O.R. (2d) 766 (Ont. H.C.J. Div.Ct.) at p. 767:

It seems to me worth remembering that where the Assessment Act, R.S.O. 1980, c. 31 requires the determination of what a property might be expected to realize if sold on the open market by a willing seller to a willing buyer (s. 18(2)), the price paid in a recent free sale of the subject property itself, where, as in this case, there is neither changes in the market nor to the property in the interval, must be very powerful evidence indeed as to what the market value of the property is. It is for that reason that the recent free sale of a subject property is generally accepted as the best means of establishing the market value of that property.

....

...I think that generally speaking the recent sales price, if available as it was in this case, is in law and, in common sense, the most realistic and most reliable method of establishing market value.

Complainant's Rebuttal Position:

[26] The Complainant's Rebuttal Disclosure is labelled C-2.

[27] The Complainant submitted that the Respondent by "seeking to amend the assessed value of the subject; is attempting to do so improperly and this notion of changing or altering or otherwise changing the assessment 14 days prior to the hearing, contravenes principles of fairness and due process."

[28] The Complainant, on page 5, provided Citation: Ag Pro Grain Management Services Ltd. v. Lacombe (County of), 2006 ABQB 351 wherein the Honourable Justice P.M. Clark stated:

[39] The applicants entered into the appeal process with the legitimate expectation that the issue before the Board was whether the assessments were too high. While the Board has jurisdiction to increase the assessments, in my view that jurisdiction can only be exercised in a manner that meets high standards of procedural fairness. While I am aware that the evidence upon which the Board relied on came from the applicants, the fact remains that the Board significantly changed the nature of the proceedings when it determined that an increase in the assessments might be necessary to ensure that they were correct. At this point, the proceedings took on the character of an appeal with a cross-appeal, and the applicants were entitled to notice and the opportunity to make further representations with respect to the case that they were required to meet....

[29] The Complainant submitted that in this case it was given only seven (7) days notice to respond to the Respondent's request for an increase.

[30] The Complainant, on page 18 provided Citation: Canadian Natural Resources Ltd. v. Wood Buffalo (Regional Municipality), 2012 ABQB 177 wherein Honourable Madam Justice Sulyma stated:

[166] Nevertheless, I do not think that the Municipality can seek a further increase in the assessment amount before the CARB. While I agree that the word "change" in s. 467(1) of the MGA implies both an upward and a downward adjustment, s. 460(3) expressly provides that only a taxpayer or an assessed person is entitled to make a complaint to the CARB. A complaint belongs to the taxpayer, not the Municipality. It gives the taxpayer an opportunity to demonstrate what the correct number should be: CARB 007-2010/P at 9. The municipality cannot then come in and ask the CARB to change the assessment to an altogether different number; it can only defend the assessed amount as correct. This reading of the legislation addresses concerns expressed by Rothman J. In **Les Emmeubles BP Ltee v Ville D'Anjou et al** (1978), 4 MPLR 1 (Que SC) at para 21:

I find it very difficult to conceive that the Legislature, in providing a procedure of review in favour of dissatisfied ratepayers, would have intended that these ratepayers could find themselves penalized for having exercised their rights by having to face a decision of [increasing the assessment] and in respect to which the municipalities might not even have a right to complain had the ratepayers not filed complaints.

CARB's Findings:

[31] The CARB finds the Respondent is neither a taxpayer nor an assessed person and is therefore not entitled to make a complaint to the CARB.

CARB's Reasons for Decision:

[32] The CARB finds the Respondent's ASR of 1.00 more compelling evidence than the predicted ASR of 0.96 which results from applying the Complainant's requested rental rate of \$29.50 psf.

DATED AT THE CITY OF CALGARY THIS 10 DAY OF SEPTEMBER 2014.



B. Horrocks

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2 (97 pages)	Complainant Rebuttal Disclosure
4. C3 (21 pages)	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.*

For Administrative Use Only

Property Type	Property Sub-Type	Issue	Sub-Issue
<i>Office</i>	<i>High Rise</i>	<i>Income Approach</i>	<i>Office rent rate</i>