



**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:

**1023262 Alberta LTD. (as represented by Avison Young Property Tax Services),  
COMPLAINANT**

and

**The City Of Calgary, RESPONDENT**

before:

**K. D. Kelly, PRESIDING OFFICER  
R. Deschaine, 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:

<b>ROLL NUMBER:</b>	<b>042100198</b>
<b>LOCATION ADDRESS:</b>	<b>4411 – 16 AV NW</b>
<b>FILE NUMBER:</b>	<b>76659</b>
<b>ASSESSMENT:</b>	<b>\$11,400,000</b>

This complaint was heard on 23<sup>rd</sup> day of June, 2014 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:

- Mr. J. Mayer – *Avison Young Property Tax Services*

Appeared on behalf of the Respondent:

- Ms. C. Neal – *Assessor, City of Calgary*
- Ms. S. Bazin – *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] At the commencement of the Hearing the Respondent argued that the Complainant was proposing to present evidence regarding three leases from the subject which had not been previously submitted or disclosed to the Respondent by the owner as requested by the City when it sent its Assessment Request For Information (ARFI) request to the owner. The disputed leases were for Units 150; 202; and 241 respectively in the subject. The Respondent argued that this is contrary to Section 295 of the *Municipal Government Act* (MGA). Section 295 of the MGA states:

#### **"Duty to provide information**

*295(1) A person must provide, on request by the assessor, any information necessary for the assessor to prepare an assessment or determine if property is to be assessed.*

*(2) An agency accredited under the Safety Codes Act must release, on request by the assessor, information or documents respecting a permit issued under the Safety Codes Act.*

*(3) An assessor may request information or documents under subsection (2) only in respect of a property within the municipality for which the assessor is preparing an assessment.*

*(4) No person may make a complaint in the year following the assessment year under section 460 or, in the case of linear property, under section 492(1) about an assessment if the person has failed to provide the information requested under subsection (1) within 60 days from the date of the request."*

[3] The Respondent also argued that according to Section 9(3) of Alberta Regulation 310/2009 being "*Matters Relating to Assessment Complaints Regulation*" (MRAC) the Board must not hear any evidence which has not been properly disclosed. Section 9(3) states:

**"Failure to disclose**

*9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.*

*(2) A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

*(3) A composite assessment review board must not hear any evidence from a complainant relating to information that was requested by the assessor under section 294 or 295 of the Act but was not provided to the assessor.*

*(4) A composite assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the Act but was not provided to the complainant."*

[4] The Respondent clarified that the City had attempted to contact the property owner on three separate occasions to secure the information, that being August 15, August 20, and August 22. However the Respondent was unsuccessful. She clarified that the City wanted to incorporate the lease information from the subject's building units 150; 202; and 241 into its database of "B" Class suburban office buildings so it could be analyzed as part of the City's rent study for such buildings. However, the information was never forthcoming to the City until the Complainant submitted it on May 12, 2014 as part of his disclosure for this appeal.

[5] The Complainant confirmed that the owner's agent responded to the City's ARFI request "in time" but "not properly" because the three leases in question had been inadvertently omitted by the agent. He noted he had discussed the matter with the owner's agent, but the agent could not recall speaking with the City regarding the matter. He offered that management attempted to comply with the ARFI request, but errors were made, possibly because of the 2013 flooding issues affecting the area at the time.

[6] The Board recessed to consider the Respondent's request.

[7] The Board re-convened the hearing and advised that the Respondent's objection is upheld and the three lease examples to be used by the Complainant from units 150; 202; and 241 are to be struck from his disclosure brief C-1. The Board noted that Section 295 of the MGA, and Section 9(3) of MRAC, apply as argued by the Respondent.

**Property Description:**

[8] The subject is assessed as a three-storey medical/dental "B" quality suburban office building located in Montgomery Community (adjacent to Bowness) at 4411 – 16 AV NW. It has 39,188 SF of medical space and 127 underground parking stalls. It is assessed using the Income Approach to Value methodology using a typical \$20 per SF for medical/dental office space in "B" quality buildings. The 127 underground parking stalls are assessed at \$90 per stall per month. The total assessment for the subject is \$11,400,000.

**Issues:**

[9] The Complainant raised the following issue:

- (a) What is the correct classification of, and hence the correct assessment for the subject?

**Complainant's Requested Value:**

[10] The Complainant requested that the assessment be reduced to \$8,345,000.

**Board's Decision:**

[11] The Board confirmed the assessment at \$11,400,000.

**Legislative Authority, Requirements and Considerations:**

[12] The Respondent briefly referenced Section 293, and more specifically Section 295 of the "Municipal Government Act" (MGA), and, Section 9(3) of Alberta Regulation 310/2009, being "Matters Relating to Assessment Complaints Regulation" (MRAC) as noted in [2] and [3] above.

**Positions of the Parties****Complainant's Position:**

[13] The Complainant argued that the subject is erroneously classed as a "B" quality building when in fact it exhibits the characteristics of a "C" Class building. He noted that in its assessment calculation using the Income Approach to value, the Respondent assesses "B" Class buildings using a typical rent rate of \$20 per SF, whereas "C" Class buildings are assessed using a \$14 per SF rate. The Complainant argued that if the \$14 per SF is used to assess the subject, the assessment would be reduced to \$8,345,000. He also argued that when examining the subject's current leases, all are below \$20 per SF, and, since the subject cannot attract \$20 per SF rents, it must therefore be a "C" Class building.

[14] The Complainant argued that the site has access/egress limitations to/from 16 AV NW which hinders its marketability. He also suggested that the floor plate is poorly designed and "chopped up", partly because of the building's irregular shape and the presence of a small centralized atrium. The Complainant suggested the building suffers from high rates of vacancy, a sign that it does not perform well in the marketplace. He noted the vacancy was 21% in 2011; 19% in 2012; and 17% in 2013 which he supported with an amalgamated three-year rent roll.

[15] The Complainant provided a matrix of five recent (2011 and 2012) leases representing 12% of the total space in the subject. He noted the average rent was \$14.80 per SF and the median was \$12.00 per SF. He argued that these rents fall within the range of rent values established by the City for "C" Class buildings. The Complainant referenced the City's rent analysis for "C" Quality buildings in the NW and argued that on the basis of two leases from a property at 1640 – 16 AV NW, the average rent of \$14 per SF posed by these two leases, is appropriate for the subject. Therefore, he argued, the subject should be assessed using \$14.00 per SF for the office space which would reduce the assessment to \$8,345,000.

**Respondent's Position:**

[16] The Respondent noted that to determine market value for the subject, or any building, the City must use "Typical" values gathered from many similar properties in the broader community, and not the actual rents from the subject. She also noted that "Based on the leasing information for the subject, as provided to the City on March 27, 2013, there was no recent leasing activity that fairly represented the current market." The Respondent provided a copy of the rent roll for the subject and noted, as she scanned through it, that many of the suites in the site have dated leases from 2006 or 2007 for example. She also argued that her position on this point is supported by Board decision CARB 2041-2012-P.

[17] The Respondent also noted that while the rent roll shows that 25 underground parking spaces rent for \$90 per month per stall, and 27 spaces rent for \$175 per stall per month, all of the site's 127 stalls are assessed at only \$90 per stall per month. She provided recent Remax marketing materials which showed the subject's parking stalls available at \$175 per stall per month for prospective tenants. The Respondent also provided marketing materials from Altus Insight, advertising the subject as a "B" Class building, and office space in it at \$18.00 pr SF. The Respondent also noted that the Altus materials suggest it has "excellent access/egress, a "new roof, newly resurfaced underground tenant parking lot" and a "new video surveillance system".

[18] The Respondent provided marketing materials for the subject from "Spacelist" advertising a "base rent of \$18.00/SF" in the subject, and also noting it was a "B" Class building. She also provided marketing materials from Century 21 Commercial Group for the Complainant's comparable at 1640 – 16 AV NW, and noted that it is an older 1964 building asking \$15 per SF rent whereas the subject is a newer 1992 building with underground parking asking \$18 per SF. The Respondent clarified that typically "C" Class buildings do not have underground parking like the subject which has 127 underground spaces. In response to questions from the Complainant, the Respondent also noted that there are numerous factors that are used to determine the classification of a building, and these are available on the City's website.

[19] The Respondent provided the City's rental analysis for "B" Class suburban medical/dental offices in NW Calgary. It contained 7 current (all 2013) leases from three buildings which demonstrated a median value of \$20 per SF. The Respondent argued that

these leases are more current than the Complainant's and hence more indicative of current market value. She noted that the City used this "typical" \$20 per SF value to assess the subject and all similar properties in the area.

[20] The Respondent argued therefore that all of the evidence presented to the Board indicates that the subject's assessment is fair and equitable, and the assessment should be confirmed at \$11,400,000.

**Board's Reasons for Decision:**

[21] The Board finds that the lease data from the subject as submitted by the Complainant, is dated (from 2006 and 2007) and not representative of the current market, unlike the more current (2013) lease data from the Respondent. The Respondent's lease data from the subject and selected property comparables provide typical rent values which support the assessment.

[22] The Board finds from the evidence submitted by the Respondent that the subject is being marketed as a "B" Class building with underground parking and \$18 per SF office rent values. This marketing information equates the subject to the various "typical" characteristics of a "B" Class building as identified by the Respondent, and which characteristics are used for assessment purposes. On the basis of this and other evidence submitted at this hearing, the Board concludes that the subject is not a "C" Class building as alleged by the Complainant. The evidence demonstrates that "C" Class buildings in this locale typically display \$15 per SF office rents and no underground parking. The Board accepts therefore that the subject is properly classified by the Respondent as a "B" Class building and should be assessed as such.

[23] The Board accepts the position of the Respondent that the Complainant provided insufficient evidence to confirm that the subject "suffers" in the marketplace from its age; floor plate configuration; access issues; atrium design, etc. and therefore should be classified as a "C": Class building and assessed using "C" Class building valuation parameters.

[24] The Board finds that the one comparable property used by the Complainant at 1640 – 16 AV NW is not comparable to the subject because it has no underground parking; is 28 years older than the subject; and is attracting \$15 per SF office rents. Conversely, the subject has 127 underground parking spaces renting for value, and is currently renting office space in the \$18 per SF range.

[25] The Board finds that the City's rental analysis for "B" Class suburban medical/dental offices in NW Calgary which consists of seven 2013 leases, demonstrate current market value for such space and supports the assessment.

[26] The Board finds that the Complainant provided insufficient information to demonstrate that the assessment is not correct, fair, or equitable.

DATED AT THE CITY OF CALGARY THIS 17<sup>th</sup> DAY OF July 2014

  
 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	commercial	Suburban office	market value	Classification and Assessment parameters