

**CITY OF CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of a complaint filed with the City of Calgary Assessment Review Board pursuant to Part 11 of the *Municipal Government Act*, Chapter M-26, Revised Statutes of Alberta 2000 (the Act).

BETWEEN:

Altus Group, COMPLAINANT

and

The City Of Calgary, RESPONDENT

BEFORE:

J. Krysa, PRESIDING OFFICER

D. Julien, MEMBER

Y. Nesry, MEMBER

A hearing was convened on July 26, 2010 in Boardroom 2, at the office of the Assessment Review Board, located at 1212 - 31 Avenue NE, Calgary, Alberta in respect of the property assessment prepared by the assessor of the City of Calgary, and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	123187692
LOCATION ADDRESS:	180 94 Avenue SE
HEARING NUMBER:	59351
ASSESSMENT: (As Amended)	\$29,710,000 (Annual Assessment: \$34,480,000)

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a 338,428 square foot (sq.ft.) parcel of land, improved with a 123,751 sq.ft. neighbourhood shopping centre constructed in 1974 and added to in 1987, with paved surface parking and known as Macleod Plaza.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The Assessment Review Board derives its authority to make decisions under Part 11 of the Act. At the commencement of the hearing the Respondent raised the following jurisdictional matter:

As a result of a review of the subject property, and prior to a complaint being filed, the assessor of the City of Calgary prepared an amended 2010 property assessment pursuant to s. 305 of the Act in the amount of \$29,710,000. An amended 2010 property assessment notice was mailed on February 12, 2010.

As the complaint on the Annual Assessment notice was properly filed with the Clerk of the Calgary Assessment Review Board on March 04, 2010, subsequent to the mailing of the amended assessment notice, and as there was no objection raised by either party, the Board proceeded to hear the merits of the complaint against the amended assessment value.

PART C: MATTERS / ISSUES

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment amount
4. an assessment class

At the commencement of the hearing, the Complainant withdrew matter 4, and indicated that the evidence and submissions would only apply to matter number 3, an assessment amount. The Complainant set out 19 reasons for complaint in Section 5 of the Complaint form, however, as a result of the amended assessment notice referred to in Part B, at the hearing the Complainant stated only the following issues remained in dispute:

Issue 1: The net assessable area of 123,751 square feet is in error

Issue 2: The rental rates applied to the subject centre are not supported by the recent leases of the centre

Issue 3: The subject centre restaurants are not freestanding and wrongly classified.

Issue 4: The vacancy rates applied do not reflect market.

The Complainant requested an assessment of \$23,530,000.

Issue 1: The net assessable area of 123,751 square feet is in error

The Complainant provided a rent roll for the subject property indicating the total area of all leases to be 121,614 sq.ft., in contrast to the current total assessed area of 123,751 sq.ft.

Decision - Issue 1

The Board finds that there is insufficient reliable evidence to conclude that the assessed area of 123,751 sq.ft. is incorrect.

The rent roll provided by the Complainant was inconsistent with other evidence located within exhibit C1 with respect to the total area of the subject property. For example, the rent roll total area includes lease areas of tenants "Santa Fe" and "Blaskin & Lane", however the Board noted that the "My Property" report and overhead photographs of the subject at pages 17 to 19 indicate that the spaces occupied by those tenants are located within a separate structure of the shopping centre development, and valued under a separate tax roll account.

Issue 2: The rental rates applied to the subject centre are not supported by the recent leases of the centre.

The Complainant submitted a rent roll for the subject property as at December 2008, as well as a summary and analysis of the contract rents in place to demonstrate that the assessed market rent coefficient is excessive in relation to the average and median contract rents within the subject [C1 pgs 26 – 37]. The analysis set out average and median lease rates that were supportive of the (amended) assessed rates applied to CRU (commercial retail unit) spaces of 0 to 1,000 sq.ft, and 2,501 to 6,000 sq.ft., however the analysis indicated average and median contract lease rates for the remainder of the CRU spaces as follows:

CRU Area – Sq.Ft.	Average	Median
1,001 to 2,500	\$ 20.31	\$ 19.25
>6,000 (3 Leases)	\$ 14.17	
>15,000 (1 Lease)	\$ 13.50	

The Complainant provided further evidence of lease rate comparables of leases greater than 6,001 sq.ft indicating the median, mean and weighted average to be \$15.00, \$14.50, and \$14.44 per sq.ft. respectively; and evidence of lease rate comparables for leases greater than 16,000 sq.ft indicating median, mean and weighted average to be \$15.00, \$15.03, and \$14.98 per sq.ft. respectively [C1 pgs 39 - 40].

The Respondent submitted lease rate comparables for the disputed CRU size ranges, exhibiting the following range of lease rates:

CRU Area – Sq.Ft.	Range	Median
1,000 to 2,500	\$ 24.00 to \$ 34.00	
>6,000 (9 Leases)	\$ 11.50 to \$ 28.00	\$ 20.25
Anchor – Big Box (7 Leases)	\$ 16.50 to \$ 22.50	\$ 19.50

As the matters in issue 2 (market rent), and issue 3 (equity), both relate to appropriate market rent coefficients for the various property components, the Board will address the matters simultaneously.

Issue 3: The subject centre restaurants are not freestanding and wrongly classified.

The Complainant submitted 9 comparable assessments of restaurants assessed at market rent rates of \$24.00 to \$28.00 per sq.ft. and 3 current business assessment notices indicating a range of business assessment net annual rental values from \$22.00 to \$24.00 per sq.ft.; and 5 comparable assessments of "fast food" restaurants assessed at market rent rates of \$26.00 to \$28.00 per sq.ft. to illustrate that the restaurants in the subject property are inequitable assessed in relation to similar properties [C1 pgs 42 to 78].

The Respondent submitted a list of 19 "fast food" restaurants that have been assessed at a \$30.00 per sq.ft. market rent rate to demonstrate that this component within the subject is assessed equitably with other similar properties. Further, the Respondent put forward the subject property rent roll and highlighted the contract rents in place for the full service restaurants to support the (amended) market rent coefficients of \$24.00 and \$30.00 per sq.ft. [R1 pgs 15 - 16]

Decision - Issues 2 and 3

The Board finds that the correct, and equitable market rent coefficients are as set out below:

Space	Assessed Area	Assessed Rate \$	Requested Area	Requested Rate \$	Finding Area	Finding Rate \$
Automotive	5,638	\$ 16.00	5,638	\$ 16.00	5,638	\$ 16.00
CRU 0 - 1000	4,146	\$ 25.00	4,146	\$ 25.00	4,146	\$ 25.00
CRU 1001 - 2500	14,553	\$ 24.00	14,354	\$ 20.00	14,553	\$ 24.00
CRU 2501 - 6000	34,972	\$ 19.00	34,972	\$ 19.00	34,972	\$ 19.00
CRU 6001+	17,011	\$ 18.00	27,591	\$ 15.00	17,011	\$ 18.00
Retail: Poor Location	10,580	\$ 15.00	-	\$ -	10,580	\$ 15.00
Anchor	22,458	\$ 18.00	22,458	\$ 15.00	22,458	\$ 15.00
Restaurant Dining	7,156	\$ 24.00	10,218	\$ 26.00	7,156	\$ 26.00
Restaurant Dining	5,000	\$ 30.00	-	\$ -	5,000	\$ 26.00
Restaurant Fast Food	2,237	\$ 30.00	2,237	\$ 28.00	2,237	\$ 30.00
	<u>123,751</u>		<u>121,614</u>		<u>123,751</u>	

The above chart identifies the current (amended) assessed areas and applied market rent coefficients, the Complainant's requested areas and coefficients, and the Board's findings for each of the components.

The Board found the Complainant's rent roll analysis to be of limited value in the determination of an appropriate market rent coefficient as of the valuation date for this assessment. The majority of contract rents within the subject were dated, (one commencing 25 years ago) and there were too few current leases to establish a conclusive analysis of current leasing activity. Also there was no evidence that any of the more recent lease rates were typical of current market leasing activity outside of the subject property, as the Complainant's analysis of > 6,000 sq.ft. market rate comparables also included leases commencing as far back as July 2004, and none in the assessment year.

The Board accepts the Respondent's lease rate comparables on pages 12 and 13 of exhibit R1 which support the market rent coefficients used in the amended assessment for CRU areas of 1,000 to 2,500 sq.ft., and CRU areas >6,000 sq.ft.

With respect to the larger CRU space of >20,000 sq.ft. the Board was persuaded by the Complainant's comparable market leases at page 40 of exhibit C1. The evidence of 5 leases, commencing within a few months of the valuation date, clearly supports the Complainant's request of a \$15.00 per sq.ft. market rent coefficient.

On the issue of an appropriate rate for the restaurant spaces within the subject property, the Board finds that there is ample evidentiary support for a \$30.00 market rent coefficient for the "fast food" space in the Respondent's list of equity comparables at page 15 of R1; however, the Board finds that the CRU type location of the dining restaurants within the subject property would suggest a market rent coefficient somewhat less than that applied to the freestanding restaurant comparables that have been assessed with a \$28.00 per sq.ft. market rent coefficient.

Issue 4: The vacancy rates applied do not reflect market.

The Complainant submitted a vacancy study of community and neighbourhood shopping centres indicating that the average and median vacancy rate of CRU (commercial retail unit) space within these property types was 11.87% and 10.62% respectively [C1 pg 102].

The Respondent presented an analysis of the Complainant's study, with revisions based on data acquired from the Assessment Request For Information (ARFI) forms, and adjustments reflecting the exclusion of 2 specific properties that, it was argued, should not be considered typical of the current market.

The Respondent and Complainant both submitted that the Assessment Review Board has, in recent cases, not accepted the Complainant's study in light of the Respondent's analysis, and as a result, the Complainant did not pursue the matter in argument.

Decision - Issue 4

The Board finds that there was insufficient conclusive evidence from the Complainant to disturb the assessment with respect to the vacancy allowance.

PART D: FINAL DECISION

The assessment is revised from \$29,710,000 to \$28,810,000.

Dated at the City of Calgary in the Province of Alberta, this 31st day of August, 2010.



J. Krysa, Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE ASSESSMENT REVIEW BOARD:

NO.	ITEM
1.	Exhibit C1 Complainant's Brief
2.	Exhibit R1 Respondent's Brief
3.	Exhibit C2 Complainant's Rebuttal Evidence
4.	Exhibit C3 ARB Decisions – 2010 Business Assessments (2)

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING	CAPACITY
1. A. Izard	Representative of the Complainant
2. M. Byrne	Representative of the Respondent

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.*