

**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 Ltd., COMPLAINANT**

**and**

**The City Of Calgary, RESPONDENT**

**BEFORE:**

***J. Krysa, PRESIDING OFFICER***

***D. Julien, MEMBER***

***Y. Nesry, MEMBER***

A hearing was convened on July 29, 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:

<b>ROLL NUMBER:</b>	<b>019130202</b>
<b>LOCATION ADDRESS:</b>	<b>5005 Dalhousie Drive NW</b>
<b>HEARING NUMBER:</b>	<b>59052</b>
<b>ASSESSMENT:</b>	<b>\$49,780,000</b>

**PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT**

The subject property is a 781,485 square foot (sq.ft.) parcel of land, improved with a 188,597 sq.ft. neighbourhood shopping centre constructed in 1980 with major additions in 1996, and paved surface parking. The development is known as Dalhousie Station.

**PART B: PROCEDURAL or JURISDICTIONAL MATTERS**

There were no procedural or jurisdictional matters raised by the parties during the course of the hearing.

**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 on page 3 of exhibit C1, only the following issues were identified to be in dispute:

- Issue 1: The rental rates applied to the Box Store location are excessive given the lease of the subject, and the lease of comparable property. Further this space has been treated inequitably to other location with similar space. The area has also been incorrectly classified as small CRU space.
- Issue 2: The vacancy rate applied to the office space, CRU space and the anchor space are far under applied given the market on July 1<sup>st</sup>, 2009 and the amount of vacancy for the assessment year.
- Issue 3: The rental rates applied to the Bank contradict the City of Calgary's own market evidence for CRU space banks, and market value as of July 1<sup>st</sup>, 2009.
- Issue 4: The Rental Rate applied to the CRU space, Gas Bar and Restaurant spaces have not been applied equitably or consistently within the market area, or throughout the municipality.

At the hearing the Complainant indicated that the \$13.00 market rent coefficient applied to the supermarket anchor tenant and the \$1.00 market rent coefficient applied to the mezzanine area would not be an issue before the Board.

The Complainant requested an assessment of \$37,900,000 [C1 pg 3], although the Board was provided with several other requested values throughout exhibit C1.

**Issue 1:** The rental rates applied to the Box Store location are excessive given the lease of the subject, and the lease of comparable property. Further this space has been treated inequitably to other location with similar space. The area has also been incorrectly classified as small CRU space.

The Complainant argued that a 22,375 sq.ft. demised area currently occupied by "Chapters" should be analyzed and valued independently of the smaller CRU areas that are stratified into a CRU 6,000+ sq.ft category, as leasing activity for larger "big box store" areas exhibit a lower market rent rate than the 6,000 to 15,000 sq.ft CRU areas. In support of this argument, the Complainant submitted the details of the lease for the "Chapters" space indicating a contract rent of \$15.00 per sq.ft. as at the 1996 commencement, with a rent "step up" to \$15.50 per sq.ft. as of March 01, 2010. Also submitted was an analysis of 37 leases dating from 1997 to 2009 to arrive at median, average and weighted average market rent rates of \$15.00, \$14.91 and \$14.81 per sq.ft. respectively. To establish that a market rent rate of \$15.00 would also be equitable in relation to other similar properties, the Complainant also provided four assessment calculations of other properties, indicating market rent coefficients of \$14.00 and \$16.00 per sq.ft. were relied on in the preparation of the assessments by the assessor. [C1 pgs 62-74]

The Complainant further submitted a number of Municipal Government Board and Assessment Review Board decisions respecting assessments of prior assessment years in support of the \$15.00 market rent request.

The Respondent did not provide any market evidence (leases) in support of the current market rent coefficient applied to the disputed area.

To demonstrate that the subject property was equitably assessed the Respondent provided five 2010 business assessments that were assigned a net annual rental value (NARV) of \$18.00, however under cross examination the Respondent conceded that 2 of the comparables were subsequently revised to \$15.00 per sq.ft. by the Assessment Review Board, and rebuttal evidence was submitted by the Complainant to show that the remaining spaces were either vacant, or were leased for rates well below \$18.00 per sq.ft.

### **Decision - Issue 1**

The Board finds that the \$18.00 market rent coefficient applied to the 22,375 sq.ft. "Chapters" CRU is unsupported by market evidence, and inequitable in relation to other similar properties. A market rent rate of \$15.00 per sq.ft. is evident and equitable.

The Board gave little weight to the Complainant's lease analysis due to the significantly dated leases in the sample, and the range of lease rates from \$9.10 to \$20.75 per sq.ft., which the Board found were too wide ranging from which to establish a "typical" market rate. The Board did however refer to the leases and lease renewals in the analysis that commenced in the assessment year which supported the Complainant's position that a \$15.00 per sq.ft. market rent coefficient assigned to this area was reasonable. This value was also deemed equitable to the \$14.00 to \$16.00 per sq.ft. range of the equity comparables presented by the Complainant.

The Board also gave little weight to the Complainant's historical decisions of the Municipal Government Board and Assessment Review Board, as the decisions were the Board's determinations of the typical market well before the current valuation date of July 01, 2009.

**Issue 2:** The vacancy rate applied to the office space, CRU space and the anchor space are far under applied given the market on July 1<sup>st</sup>, 2009 and the amount of vacancy for the assessment year.

With respect to the CRU space, 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 421]. The Complainant did not submit evidence of market vacancy with respect to anchor tenant or office spaces, however both the Complainant and Respondent provided equity comparables for anchor tenant spaces.

The Respondent submitted 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 [R1 pgs 51-54 and 80-229]. Also provided was a summary of vacancy statistics and copies of third party retail market reports to support the vacancy rates established by the assessor [R1 pgs 58-59 and 230-242].

The Respondent also submitted a list of 11 neighbourhood shopping centres with identical vacancy rates to that of the subject to demonstrate that that vacancy allowances of 1% and 4% for anchor tenants and CRU spaces were equitably applied. [R1 pg 42]

The Respondent and Complainant both indicated that the Assessment Review Board has, in recent cases, not accepted the Complainant's study in light of the Respondent's analysis, and the Respondent included several of the decisions in exhibit R1 in this regard.

With respect to the vacancy allowance awarded to the office component of the subject, the Complainant argued that as the space competes with suburban office space, it should be awarded a similar vacancy allowance, however, there was no market evidence provided to substantiate what an appropriate vacancy allowance for office space, within a predominantly retail development ought to be.

## **Decision - Issue 2**

The Board finds that the current vacancy rate coefficients are supported by market evidence and are equitably applied amongst similar properties.

The Board was persuaded by the Respondent's market and equity evidence pertaining to neighbourhood shopping centre CRU and anchor tenant space.

Although the Complainant's "anchor tenant" comparables may have demonstrated some potential inequities with respect to the vacancy allowance, the Board noted that some of the properties were not stratified as neighbourhood shopping centres and were awarded different coefficients (eg. capitalization rate, operating costs, etc.) as well as the different vacancy allowance. Therefore the Board was not convinced that the Complainant's comparison was valid, as the properties were not similar, nor valued similarly in other respects.

With respect to the office space component, the Board accepts the Respondent's position that the subject property is predominantly a neighbourhood shopping centre, and office space within the development is incidental to the predominant use; and that the "office" tenants that would seek this type of location would generally not be the same as those tenants attracted to the suburban office market. As such, the vacancy rate of the surrounding suburban office market may not have any relation to that of the subject property, (and again, there was no market evidence to suggest that there is such a relationship), therefore a difference in vacancy allowances applied does not demonstrate that a valid inequity exists.

**Issue 3:** The rental rates applied to the Bank contradict the City of Calgary's own market evidence for CRU space banks, and market value as of July 1<sup>st</sup>, 2009.

The Complainant submitted a copy of the Respondent's bank lease comparables, with an analysis to illustrate that the typical market rents of banks, located in CRU locations were lower than the rates evident in freestanding "pad" locations. [C1 pg 24]

The Respondent provided a list of comparable properties assessed at an identical market rent coefficient as the subject, supported by the median lease rate evident in the original analysis referred to in the Complainant's exhibit above [R1 pg 304-305].

### **Decision - Issue 3**

The Board finds that the market rent coefficient of \$28.00 per sq.ft. applied to the bank area, is supported by market evidence and equitably applied.

The Board finds the Complainant's analysis was not relevant as in this instance the bank does not occupy an internal CRU, but rather, shares approximately ½ of a freestanding structure with equivalent exposure and benefit to a single tenant freestanding structure.

The median lease rate of \$28.58 per sq.ft. evident in the Respondent's analysis supports the market rent coefficient of \$28.00 per sq.ft. applied in the preparation of the assessment. Further, the Respondent's comparable properties with an identical market rent coefficient demonstrate that the subject is equitably assessed.

**Issue 4:** The Rental Rate applied to the CRU space, Gas Bar and Restaurant spaces have not been applied equitably or consistently within the market area, or throughout the municipality.

The Complainant submitted the market rent coefficients applied to the various size ranges of CRU areas of 11 comparable properties to demonstrate that the subject is inequitably assessed [C1 pgs 37 – 58].

The average and median market rent coefficients calculated from the Complainant's comparables are as set out below:

Commercial Retail Unit Size Ranges	Average of 11 Comparables	Median of 11 Comparables	Subject Coefficients
CRU 0 – 1,000 sq.ft.	\$24.50	\$25.00	\$29.00
CRU 1,001 – 2,500 sq.ft.	\$22.91	\$24.00	\$27.00
CRU 2,501 – 6,000 sq.ft.	\$21.91	\$23.00	\$26.00
CRU > 6,000 sq.ft.	\$19.80	\$21.00	**\$24.00**

\*\*The Respondent conceded a correction to \$18.00 per sq.ft.

The Complainant also submitted a number of examples of retail office properties that were assessed with market rent coefficients ranging from \$14.00 to \$20.00 per sq.ft. and argued that the (one) \$20.00 market rent coefficient was applied to a property that was superior to the subject [C1 pgs 258-264].

The Complainant further submitted several examples of gas bar lease rates, and several gas bar equity comparables in support of a reduction in the assessment of the gas bar [C1 pgs 273 – 336]. One of the gas bar leases, at page 280, was a lease of the subject property indicating the rentable area to be 900 sq.ft. in contrast to the assessed gas bar coefficient of \$70,000, reflective of an area of over 1,000 sq.ft. The Complainant further argued that if the improvement was slightly over the 1,000 sq.ft threshold, the taxpayer should not be assessed at the higher rate.

With respect to the restaurant areas, the Complainant provided the assessment records of a number of comparable properties to demonstrate that the subject's market rent coefficient has not been equitably applied amongst other similar properties. A range of \$24.00 to \$28.00 per sq.ft. was illustrated with respect to full service restaurants, and \$26.00 to \$28.00 per sq.ft. was illustrated with respect to fast food restaurants, in contrast to the \$30.00 per sq.ft. coefficient applied to both types of restaurants in the subject. [C1 pgs 164-252]

The Respondent submitted 5 comparable business assessments for each CRU size range to demonstrate that the NARV rates assigned to the areas were applied equitably to other properties [R1 pgs 33-36, 76-77].

The Respondent also submitted five business assessment examples of upper level office space in shopping centres that were assessed at a \$20.00 per sq.ft. NARV [R2 pg 307].

With respect to the Gas Bar assessment, the Respondent indicated that the assessor stratified the properties as follows:

Structure (sq.ft.)	Market Rent Coefficient
• Less than 1,000 (kiosk)	\$45,000
• Greater than 1,000 (convenience store)	\$70,000

Further, the Respondent stated that the 900 sq.ft area set out on the lease documents was incorrect, as a representative from the assessment department had recently attended the subject property and had measured the improvement at 1,008 sq.ft.

To demonstrate that the restaurant spaces in the subject property were equitably assessed, the Respondent submitted two comparable property assessment calculations that exhibited a \$30.00 market rent coefficient was applied to the fast food restaurant areas, and the business assessment of five full service restaurants indicating a \$30.00 NARV coefficient. [R1 pgs 71-76].

#### **Decision - Issue 4**

The Board finds the market rent coefficients applied to the CRU spaces, upper floor (office) areas, and restaurant spaces have not been applied equitably or consistently throughout the market area. The Board further finds that the market rent coefficients applied to the Gas Bar in the subject have been equitably applied throughout the market area and correctly applied to the subject.

Although the Board finds that not all of the properties in the Complainant's analysis were comparable to the subject and should not be included in the analysis, a comparison to the individual properties within the analysis (specifically #1 to #5) confirmed that the CRU spaces within the subject were not equitably assessed with similar and competing properties. The evident variance in market rent coefficients amongst obviously similar properties was explained by the Respondent, during questions, that it is not the classification of an improvement that determines the rates assigned, but rather the (contract) rental rates an improvement can achieve.

The Board finds the variance of market rent coefficients was also evident in the examples of full service and fast food restaurants submitted by both parties, whereby different market rent coefficients were applied to obviously similar properties.

With respect to upper floor (office) spaces in shopping centres, the Board finds the Complainant's comparables to be very compelling in that only property to be applied a \$20.00 per sq.ft. market rent coefficient appears to be a superior property in what is arguably not an inferior location compared to the subject property.

The Board finds that there was insufficient evidence to disturb the assessment of the gas bar. The Complainant's (documentary) evidence was less compelling than that of the Respondent, who had someone physically attend the site and measure the improvement. With regard to the improvement being "only a few square feet" over the (1,000 sq.ft.) size, it is part of the mass appraisal process that properties are stratified into groups, and that rates are applied equitably to those groups of properties. As such, it is expected that properties that closely straddle the criteria between groups may appear to be unfairly assessed, but that is the nature of mass appraisal.

The chart on the following page sets out the current assessed areas and applied market rent coefficients, the Complainant's requested area allocations and coefficients, and the Board's finding for each of the respective components.

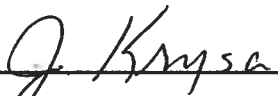
Component	Assessed Area	Assessed Rate \$	Requested Area	Requested Rate \$	Decision (Area)	Decision (Rate \$)
TD Bank (Duplex)	3,150	\$28.00	3,150	\$25.00	3,150	\$28.00
CRU 0 - 1000	3,783	\$29.00	3,783	\$24.00	3,783	\$25.00
CRU 1001 - 2500	25,748	\$27.00	25,748	\$21.00	25,748	\$24.00
CRU 2501 - 6000	17,264	\$26.00	17,264	\$20.00	17,264	\$23.00
CRU 6001+	46,775	\$24.00	24,400	\$22.00	<b>24,400</b>	<b>**\$18.00</b>
CRU Box Store	0	\$0.00	22,375	\$15.00	<b>22,375</b>	<b>\$15.00</b>
CRU (Upper Floor)	9,021	\$20.00	9,021	\$18.00	9,021	\$18.00
Super Market	56,977	\$13.00	56,977	\$13.00	56,977	\$13.00
Mezzanine	416	\$1.00	416	\$1.00	416	\$1.00
Rest. Dining	21,718	\$30.00	21,718	\$28.00	21,718	\$28.00
Rest. Fast Food	3,744	\$30.00	3,744	\$28.00	3,744	\$28.00
Gas Bar	1,000	\$70.00	1,000	\$45.00	1,000	\$70.00

\*\* The Board accepts the Respondent's corrected market rent coefficient [R2 pg 312].

#### PART D: FINAL DECISION

The assessment is revised from \$49,780,000 to \$43,120,000.

Dated at the City of Calgary in the Province of Alberta, this 7<sup>th</sup> day of September, 2010.

  
 J. Krysa  
 Presiding Officer



**APPENDIX "A"****DOCUMENTS RECEIVED AND CONSIDERED BY THE ASSESSMENT REVIEW BOARD:**

<b>NO.</b>	<b>ITEM</b>
1.	Exhibit C1 Complainant's Brief
2.	Exhibit R1 Respondent's Brief (Part 1)
3.	Exhibit R2 Respondent's Brief (Part 2)
4.	Exhibit C2 Complainant's Rebuttal Evidence

**APPENDIX 'B'****ORAL REPRESENTATIONS**

<b>PERSON APPEARING</b>	<b>CAPACITY</b>
1. A. Izard	Representative of the Complainant
2. B. Thompson	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.*