

**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:**

***Shepard Development Corporation c/o Hudson's Bay Company  
(as represented by Wilson Laycraft, Barristers & Solicitors), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***L. Wood, PRESIDING OFFICER  
J. O'Hearn, MEMBER  
A. Zindler, 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 2011 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>201451085</b>
<b>LOCATION ADDRESS:</b>	<b>5075 126 AV SE</b>
<b>HEARING NUMBER:</b>	<b>64688</b>
<b>ASSESSMENT:</b>	<b>\$19,030,000</b>

This complaint was heard on June 16, 2011 and September 19, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- *Mr. B. Dell* *Lawyer, Wilson Laycraft, Barristers & Solicitors*
- *Mr. G. Chmelski* *Tax Manager, Hudson's Bay Company*
- *Mr. A. Izard* *Agent, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *Ms. B. Thompson* *Assessor, City of Calgary*
- *Mr. R. Ford* *Assessor, City of Calgary*
- *Mr. K. Gardiner* *Assessor, City of Calgary*
- *Mr. I. McDermott* *Assessor, City of Calgary*

**Board's Decision in Respect of Procedural or Jurisdictional Matters:**

The Board notes there is another complaint filed by Altus Group Ltd., on behalf of the shopping centre (**file #63057**) which is also associated with this roll number. It was the intent of the parties and the Board to have multiple complaints associated with one roll number heard together (**CARB 0800-2011-P**). Additional time was required to hear the complaint filed by **Altus Group Ltd.** which was then rescheduled to be heard on November 4<sup>th</sup>, 2011. However, that complaint was subsequently **withdrawn** at the outset of that hearing (**CARB 0814-2011-P**).

It is noted that the Complainant who filed a complaint on behalf of the tenant indicated that he had filed complaints on four of the six Home Outfitter stores located in Calgary. The Complainant submitted that the evidence and argument submitted on file **#64690** (Home Outfitter located at 3915 51 ST SW) be cross referenced throughout the four complaints. The Respondent's evidence and argument would be cross - referenced to files **#64686** and **#64688**. A separate assessment package would be submitted in regards to file **#64682**.

**Property Description:**

The subject property is the Home Outfitter store (33,659 sq. ft.) located at the Sheppard Regional Shopping Centre.

**Issues:**

1. The assessed rental rate for the Home Outfitter should be reduced from \$17.00 psf to \$15.00 psf.

**Complainant's Requested Value:** \$18,060,000

**Board's Decision in Respect of Each Matter or Issue:**

1. The assessed rental rate for the Home Outfitter should be reduced from \$17.00 psf to \$15.00 psf.

The Complainant submitted the current lease rates for the six Home Outfitter stores located in Calgary that were signed in May 2001 – August 2009 (Exhibit C1 Tab 3). The leased areas are 32,356 – 40,731 sq. ft. and the rates range between \$14.75 - \$17.00 psf.

The Complainant's witness, Mr. Greg Chmelski, testified that rents signed by national retailers tend to be consistent across the country and therefore those rents are relevant in determining the market rent in any location. He indicated that rents for anchor tenants have been consistent for the past 4 – 5 years with no upward trends. He stated the typical areas for Home Outfitter store range between 30,000 – 40,000 sq. ft. and the typical rents are \$14.00 - \$16.00 psf. He indicated that typical tenant allowances are a minimum of \$20.00 psf to get the store in functioning order (Exhibit C1 page 2). He submitted that this would translate into the net rental rate by reducing all of the rates by \$1.33 - \$1.50 psf over a 15 year initial term. The actual rental rate would be \$14.00 psf. Mr. Chmelski also drew the Board's attention to several articles on retail in the submission (Exhibit C1 Tab 13).

The Complainant submitted that the rental rates for property assessments should equal the business assessments, which was the Respondent's practice in 2010. Accordingly the business assessments for the Home Outfitter as determined by the Local Assessment Review Board in 2010 should be the same as there is no evidence submitted by the Respondent to warrant an increase (Exhibit C1 Tab 9).

The Respondent submitted the \$17.00 psf assessed rate was based on an analysis of recent leases for Junior Big Box space that commenced in January 2008 – October 2010. The Respondent referred to 30 lease comparables of leased areas between 14,836 – 37,809 sq. ft. with lease rates of \$12.50 - \$30.91 psf (median of \$17.05 psf) (Exhibit R1 page 44).

The Respondent also submitted 64 equity comparables to show that the \$17.00 psf rate was applied to leased areas of 14,836 – 46,043 sq. ft. (Exhibit R1 pages 45 & 46).

The Respondent argued, given the recent "McIntyre" decision, the assessed rental rates for business and property assessments are not the same for 2011.

The Board finds there was little evidence presented by the Complainant to support a \$15.00 psf assessed rental rate. The Board was not persuaded by the Complainant's argument that the rental rates for business assessments and property assessments must be the same. The fact that the municipality had applied the same assessed rental rate to both the business and property assessments in 2010 does not convince the Board that methodology should still be employed given the recent court decision *Calgary (City) v. Canadian Natural Resources Limited* 2010 ABQB 417 as referred to by both parties.

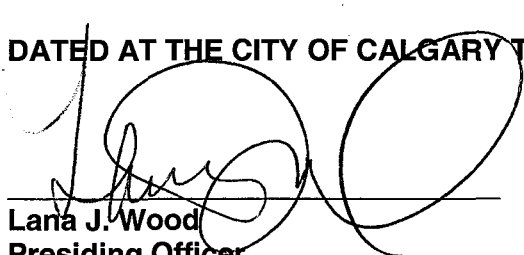
In that decision, the Court found the City of Calgary was incorrect to have defined the net annual rental value ("NARV") in its Business Tax Bylaw *as the typical market annual rental value of the premises, exclusive of operating costs, but inclusive of costs of leasehold improvements* when determining the annual business assessments. The NARV reflects a value attributable to the landlord and typically tenant improvements do not add value to the owner. As

Justice McIntyre stated "*the failure of the City to consider the effect of leasehold improvements on the "net annual rental value" has the effect of incorrectly and inequitably inflating business tax assessments*" (para. 106, page 26).

**Board's Decision:**

The decision of the Board is to confirm the 2011 assessment for the subject property at \$19,030,000.

DATED AT THE CITY OF CALGARY THIS 20<sup>th</sup> DAY OF DECEMBER 2011.



Lana J. Wood  
Presiding Officer

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:****EXHIBIT NO.****ITEM**

- | EXHIBIT NO. | ITEM                     |
|-------------|--------------------------|
| 1. C1       | Complainant's Submission |
| 2. R1       | Respondent's Submission  |

*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**

SUBJECT	PROPERTY TYPE	PROPERTY SUB - TYPE	ISSUE	SUB - ISSUE
CARB	Retail	Power Centre	Income Approach	Net Market Rent/ Lease Rates