

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaints against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

Riokim Holdings(Alberta)Inc.,(as represented by Altus Group Ltd.) COMPLAINANT "A"

and

***Hudson's Bay Company (as represented by Wilson Laycraft Barristers & Solicitors)
COMPLAINANT "B"***

and

The City Of Calgary, RESPONDENT

before:

T. B. Hudson, PRESIDING OFFICER

D. Steele, MEMBER

J. O'Hearn, MEMBER

These are complaints 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:

ROLL NUMBER: 757109608

LOCATION ADDRESS: 275 Shawville BV SE

HEARING NUMBERS: 63316 and 64698

ASSESSMENT: \$31,790,000

Complainant A, was heard on the 28th day of June, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 7. Complainant B, was heard by the same Board panel on the 23rd and 24th days of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant A

- A. Iazard, Altus Group Ltd.

Appeared on behalf of the Respondent:

- P. Sembrat, Assessor, City of Calgary

Appeared on behalf of the Complainant B

- B. Dell, Wilson Laycraft, Barristers and Solicitors
- P. Leclaire, Hudson's Bay Company
- B. Soulier, AEC International, Property Tax Advisors

Appeared on behalf of the Respondent

- J. Young, Assessor, City of Calgary
- P. Sembrat, Assessor, City of Calgary

Background

As noted above, the Board heard two separate complainants on the same subject property. Complainant A, represented the interest of the landlord/owner of the property, while Complainant B represented the interest of the largest tenant on the subject property. The interests of the individual complainants converged in a common request for a reduction in the overall assessment. Therefore, the Board has treated the review of the individual complaints as essentially one hearing conducted in two parts. This decision letter brings together the findings of the Board with respect to the issues identified in the individual complaints, and the conclusion of the Board with respect to the complaint regarding the subject property assessment.

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

The representative for Complainant A, pointed out that the Summary of Testimonial Evidence included in the disclosure of the Respondent is very difficult to respond to given its brevity. **The Board noted the concern, but decided to proceed, given the fact that this complaint is limited to the capitalization rate applied in the assessment of the subject property.** The one sentence Summary submitted by the Respondent was brief, but did address the cap rate issue. There were no procedural or jurisdictional matters requiring Board decision with respect to Complainant B.

Property Description:

The subject property is classified as a retail "Power Centre" known as the Shoppes of Shawnessy, located at 275 Shawville BV SE. The site area is 13.23 acres and includes improvements of 166,620 square feet (sf.) of retail space. The largest of the improvements is a free standing big box Zellers store with 122,616 square feet of main floor retail space, and a non-retail mezzanine space of 3,632sf. The other improvements on site include a bank, commercial retail units and a full service restaurant. The subject is assessed based on the capitalized income approach to value to a total of \$31,790,000.

Issues:

The rent rate (\$10 psf.), used by the Respondent to calculate the potential gross income (PGI), of the main floor retail space of the Zellers store; and the rent rate (\$1 psf.), used by the Respondent to calculate the PGI for the non-retail mezzanine space in the Zellers store are the issues in **Complaint B**. The requested rates are \$8 psf. for the main floor retail, and \$0 psf. for the non-retail mezzanine space in the Zellers store.

The cap rate (7.25%), used to capitalize the net operating income (NOI), of the subject property, is the only issue in **Complaint A**. The requested cap rate is 7.75%.

The other valuation factors used by the Respondent to calculate the capitalized income approach to value assessment for the subject property were not disputed by either of the complainants.

Complainant's Requested Value: \$26,590,000

Board's Finding in Respect of Each Matter or Issue:

Complainant A

ISSUE: What Cap Rate should be Applied in the Income Approach to Value Assessment of the Subject Property?

The Board finds that the 7.25% cap rate used by the Respondent is appropriate.

In this hearing, the Board considered a complaint about the cap rate for the subject power centre property. Similar power centre sales comparable information, and, for the most part, common valuation factors were used by the parties in their submissions. However, the Complainant used "market" rent rates to calculate PGI for the comparables at the time of sale; while the Respondent used "typical" rent rates. The Board looked to the only evidence (see Page 137 of Exhibit R1) on the resulting assessment to sale (ASR) ratios; in order to determine which of the methods produced the best results in terms of market value assessments. The 7.25% cap rate used by the Respondent results in superior ASR results, when compared to the 7.75% cap rate proposed by the Complainant. This evidence convinced the Board that no

adjustment to the cap rate used to calculate the 2011 assessment of the subject property was warranted.

Complainant B

ISSUE #1: What Rent Rate should be Applied to the Zellers Store Main floor Retail Space?

The Board finds that \$10 per square foot is typical market rent for main floor retail space in big box stores located in properties similar to the subject property, and should be used in the assessment.

The Complainant is of the view that "in determining rental value for assessment purposes, it is imperative that the assessor base the calculation only upon the actual value to the landlord that is typically found in the market". See item #20 from Page 6 of Exhibit C5. The Respondent countered that such an approach does not result in an estimate of the value of the fee simple estate in the property, only the leased fee estate. In Alberta, the assessor is required to abide by the provisions of the Matters Relating to Assessment Regulation(MRAC) Part 1: Standards of Assessment, Section 2(b), which states; "an assessment of property based on market value...must be an estimate of the value of the fee simple estate in the property."

The Complainant's request for an \$8 psf. rental rate for the Zellers main floor retail space would continue a historical pattern in the City of Calgary, where assessed rental rates for property and business assessments have been the same. In fact, the 2010 assessments for property and business assessments for this Zellers store were based on a rent rate of \$8 psf. The Complainant contends that nothing has changed in the market and therefore the assessed rent rate should not be increased. In addition, the Complainant asserts that the Zellers stores are not comparable to most other big box retail stores, and therefore the comparables submitted by the Respondent are not relevant.

The Respondent contends that because the Zellers store is comparable to numerous free standing big box retail stores located in power centres in Calgary, it should be assessed using typical market rental rates. The Respondent has stratified these stores by size range, gathered rent rates through the Annual Request for Information (ARFI) process; and then assigned typical rent rates for assessment purposes to each size range. This Zellers store is included within the greater than 100,001 square foot size range strata, together with seventeen (17) other big box stores located within Calgary power centres, and assessed at \$10 psf. See Exhibit R1 Page 47. Exhibit R1 Page 53 shows two (2) lease comparables in support of the \$10 assessed rate.

On a balance of probabilities, the Complainant has to prove that the rent rate they request is a better representation of typical market rent than that used by the Respondent to prepare the assessment. The Complainant must also demonstrate that when the rent rate requested is used to calculate a revised estimate of market value for assessment purposes, that the revised estimate reflects fee simple estate value. The Board is not convinced by the evidence that either of these conclusions can be reached. Therefore the Board is not prepared to reduce the rent rate used in the assessment of the Zellers store main floor retail space.

ISSUE # 2 What Rent Rate should be Applied to the Non-Retail Mezzanine Space in the Zellers Store?

The Board finds that a rent rate of \$1 per square foot should be applied to the mezzanine space.

The Complainant requested elimination of the assessed rate of \$1psf. for the mezzanine space because no rent is paid for this space under the Zellers lease. The Respondent countered that the mezzanine space has value in use, the nominal assessment rate recognizes the current use as storage, and therefore the assessment is appropriate. The Board concurs with the Respondent on this issue.

Board's Decision:

The assessment is confirmed at \$31,790,000

DATED AT THE CITY OF CALGARY THIS 26 DAY OF July 2011.

A handwritten signature in blue ink, appearing to read 'T. B. Hudson', is written over a horizontal line.

T. B. Hudson
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant A Disclosure Evidence
2. C2	Complainant A Disclosure Rebuttal
3. R1	Respondent Disclosure
4. C1	Complainant B AEC Disclosure Evidence
5. C2	Complainant B Support and Background
6. C3 and C3a	Complainant B Legal Analysis
7. C4	Complainant B Testimony and Willsay P. Leclaire
8. C5a,b,c	Complainant B Disclosure Evidence Wilson Laycraft
9. C6	Complainant B AEC Rebuttal Evidence
10. C7	Complainant Retail Sales By Year
11. R1	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.*