

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

Altus Group Ltd, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

Earl K Williams, PRESIDING OFFICER

Ray Deschaine, MEMBER

Jim Rankin, MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of Property/Business assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 201266228

LOCATION ADDRESS: 8330 Macleod Trail SE

HEARING NUMBER: 59834

ASSESSMENT: \$19,430,000

This complaint was heard on 13 day of July, 2010 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:

- D Genereux and D Hamilton

Appeared on behalf of the Respondent:

- H Argento and T Neal

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

There was no Preliminary, Procedural or Jurisdictional Matters

Property Description:

Heritage Plaza is a 64,239 square foot (sf) Neighbourhood Shopping Centre (classified as CM0203 Retail Shopping Centre) on 4.46 acres of leased land. The land lease with the City of Calgary commenced July 1 1985 for a term of 40 years. Additionally there is a Licence of Occupation between with the City of Calgary which provides the tenant with ingress and egress from Macleod Trail as well as a number of parking stalls. The lease and licence are required because the property may be required in the future for the Heritage Road – Macleod Trail interchange as well for road allowance and setbacks for Macleod Trail.

Issues:

Capitalization Rate (Cap Rate) – the Complainant requested that the assessment cap rate be increase from the 8% used by the City to 14.33% to recognize the short life concerns resulting from the Land Lease and Licence of Occupation

Rental Rate – the assessed rental rates (expressed as a per square foot psf) applied to the CRU be:

CRU < 1000	be \$22 reduced from \$27
CRU 1000 – 2500	be \$21 reduced from \$27
CRU 2510 – 6000	be \$19 reduced from \$26
Anchor CRU > 6001	be \$15 reduced from \$22

Vacancy Rate – the vacancy rate for assessment be increased for all the CRU space from 2% to 11%

Complainant's Requested Value: \$7,100,000

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

Capitalization Rate (Cap Rate)

Complainant

The Complainant's presented the Land Lease and Licence of Occupation in support of the lease creating short life concerns with the property. Increasing the cap rate will recognize the impact of the short life concerns created by the lease.

As of July 2009 the remaining term on the Land lease is 16 years; with an option for a single renewal for a term of 5 years. The complainant identified 14 specific clauses in the lease which impact on the property and support short life concerns. One such clause (Clause 9.12) requires that the Lessee at their expense demolish or remove the commercial structures from the land which limits the duration of the term for tenant leases and the achievable rental rates. The provisions of the lease create a number of risk factors that in the view of the Complaint need to be recognized in the cap rate.

The Licence of Occupation, which may be terminated by the City on 30 days notice (Clause 6.01), provides ingress and egress to the property from Macleod Trail as well as the loss of up to 125 parking stalls. If terminated the property will have no access to or from Macleod Trail and would lose parking such that it would not have the parking required to support the retail leases.

The Complainant:

- Presented evidence that the city uses higher cap rates for assessment purposes for Lease Land. Higher cap rates are used by the City for airport tenants to recognize the uncertainty of the future land lease terms contained in the leases. The Complainant presented evidence that at the Airport the assessment cap rates for land leases were 1.75% higher than fee simple assessments for identified comparables. The subject property is vulnerable to the same risks as airport tenants.
- Argued that the provisions of the Land Lease and the License of Occupation create an environment where investments in the property must be considered on a short payback period as well it impacts on the rental rates for the premises.
- The complainant presented evidence that the terms of the Land Lease and the License of Occupation increases risk which translates into a loss of liquidity in the asset.
- Presented evidence that since 2005, decisions of the Municipal Government Board has increased the cap rate to recognize the impact of the Land Lease and the License of Occupation.

In summary the Complaint presented an analysis of the land lease and licence of occupation that results in a short life concern that impacts on the subject property that needs to be recognized in the assessment cap rate.

Respondent

The evidence presented the 2010 City of Calgary Capitalization Rates Summary which supports 8.00% for Neighbourhood Shopping Centres (NCC) as well as summary of the cap rates for 4 NCC's which had a median cap rate of 7.25% and an assessed cap rate of 8.0%.

Board Decision

Based on the evidence presented the Board increased the Cap Rate to 12.58% to reflect the impact of the Land Lease and Licence of Occupation.

Rental Rate

Complainant

Leasing comparables were presented for 35 Box Stores with a median area of 23, 923 square feet and a weighted mean of 24,895 square feet; the median and weighted average rental rate was \$15.00 per square foot. Three of the comparables with lease commencement dates prior to July 1 2009 had rental rates of \$15.00, \$15.00 and \$16.25 psf for leased areas in the range of 23,130 to 24,267 sq ft.

Respondent

Presented evidence of lease comparables for 20,000 – 40,000 sq ft in power, neighbourhood and free standing properties with a median rental rate of \$20.00 psf.; the lease comparables for Anchor's in neighbourhood/community shopping centres had a median rate of \$20.27 psf.

Board Decision

Based on the evidence presented the Board reduced the assessed rental rates for all of the CRU categories to the:

CRU < 1000	\$22
CRU 1000 – 2500	\$21
CRU 2510 – 6000	\$19
Anchor CRU > 6001	\$15

Vacancy Rate

Complainant presented the following evidence:

- Anchors –vacancy rates for over 20 grocery stores and retail anchors of varying square footage which had been assigned a vacancy of 4%
- CRU – an undated table with the vacancy rates for Community and Neighbourhood Shopping Centres with a weighted average of 10.62%.

Respondent in support of the vacancy used in the assessment presented:

- Assessment Request for Information (ARFI) for Shopping Centres with Grocery Stores in the A Category assigned a \$15.00 psf rental rate
- a Community/Neighbourhood Centre Vacancy Study which presented the 2009 Assessment Request For Information (ARFI) Vacancy rates; the vacancy rates reported by major commercial real estate firms for Neighbourhood Centres complied by quadrant of the City as well as the City of Calgary's own Vacancy study.

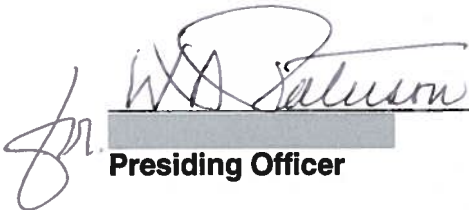
Board Decision

Based on the evidence presented the Board supported the vacancy rate of 2% for all CRU space.

Board's Decision:

The Board reduced the Assessment to \$9,350,000

DATED AT THE CITY OF CALGARY THIS 17 DAY OF August 2010.



Presiding Officer

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.*