

**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***

**I. Zacharopoulos, *MEMBER***

**H. Ang, *MEMBER***

A hearing was convened on July 20, 2010 in Boardroom 4, 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>141119800</b>
<b>LOCATION ADDRESS:</b>	<b>12445 Lake Fraser Drive SE</b>
<b>HEARING NUMBER:</b>	<b>58992</b>
<b>ASSESSMENT:</b>	<b>\$21,780,000</b>

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

The subject property is a 412,271 square foot (sq.ft.) parcel of land, improved with a 108,292\* sq.ft. shopping centre with gas bar, and paved surface parking, known as the Avenida Place Shopping Centre. (\*Total area from rent roll in Exhibit R1 pg 55)

**PART B: PROCEDURAL or JURISDICTIONAL MATTERS**

The Board considered a jurisdictional matter at the commencement of the hearing pursuant to s.9(1) *Matters Relating to Assessment Complaints Regulation, Alberta Regulation 310/2009*, with respect to a tax exemption the Complainant raised before the Board. The Board noted that the matter of an exemption was not identified in Section 4 of the complaint form, nor was the matter identified as a reason for complaint in Section 5, or in the attachment to the complaint form containing 11 grounds / issues of the complaint. The Respondent objected to the matter being raised at the hearing.

*Municipal Government Act, RSA 2000, Chapter M-26*

s. 460(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

(j) whether the property or business is exempt from taxation under part 10

s. 460(5) A complainant must

- (a) indicate what information shown on the assessment notice is incorrect,
- (b) explain in what respect that information is incorrect,
- (c) indicate what the correct information is, and
- (d) identify the requested value, if the complaint related to an assessment

*Matters Relating to Assessment Complaints Regulation, Alberta Regulation 310/2009*

s. 2 (1) If a complaint is to be heard by an assessment review board, the complainant must

(a) complete and file with the clerk, a complaint in the form set out in Schedule 1, and...

s. 9(1) A composite assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

**Decision:** The Board ruled that the matter of a tax exemption would not be heard, as section 9(1) precludes the Board from hearing any matters not disclosed on the complaint form.

**PART C: MATTERS / ISSUES**

The Complainant indicated 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 stated he would be providing evidence and submissions only on matter number 3, an assessment amount. The Complainant set out 11 reasons for complaint in Section 5 of the Complaint form; at the commencement of the hearing, the Complainant stated only the following issues were in dispute:

**Issue 1:** The achievable market rent affecting the property as of December 31, 2009 (characteristics and physical condition date) has not been recognized.

**Issue 2:** The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.

**Issue 1:** The achievable market rent affecting the property as of December 31, 2009 (characteristics and physical condition date) has not been recognized.

The Complainant submitted a rent roll from the subject property as of March 31, 2010, identifying the leases in place within the subject property (Exhibit C1 pg 40 - 47), as well as a rent roll analysis document at page 48, identifying new and renewal leases within the subject property commencing in 2008 and 2009; 18 months prior to, and 6 months subsequent to the valuation date for this assessment. In analyzing these leases, which amount to approximately 47% of the total leasable area, the complainant arrived at a weighted average net rental rate of \$22.35/sq.ft.

The Respondent argued that the extended time period of the Complainant's lease analysis, as well as the inclusion of leases commencing after the legislated valuation date did not accurately represent the market rent of the subject property as of the valuation date. The Respondent submitted that the median lease rate of the Complainant's leases commencing between July 2008 and July 2009 was \$25.50/sq.ft., well within the range of the typical rent rate as established by the Assessor, and applied to the subject and similar properties in a mass appraisal process. The Respondent further submitted, in support of assessment equity, the assessments of 3 similar properties adjacent to the subject property, all assessed at a \$26.00 rent rate, and implied that these assessments were also correct as their complaints had been withdrawn by the owner's agent. (Exhibit R1 pgs 19 - 25). The Respondent also submitted a May 2006 sale summary document of the subject property indicating a sale price of \$18,500,000, in support of the current assessed value. (Exhibit R1 pg 13).

**Decision - Issue 1:** The Board finds that a net market rent of \$26.00/sq.ft. results in a correct estimate of market value.

Notwithstanding the requirement to reflect typical market conditions for properties similar to the subject property, which would necessitate examining leases for a group of similar properties and not just within the subject; with the significant number of recent leases in the subject property the Board finds there is little need to examine dated leases, and leases subsequent to the valuation date to determine a market lease rate as of July 1. In that regard, the Board examined the leases in the 12 month period prior to the valuation date and finds the following:

Unit	Lease Start	Area	Rent/Sq.Ft.	Annual
103	01-Oct-08	2,374	\$ 28.00	\$ 66,472
206	01-Oct-08	1,426	\$ 24.00	\$ 34,224
208	01-Dec-08	793	\$ 23.00	\$ 18,239
209	01-Jul-08	800	\$ 25.00	\$ 20,000
211	01-Sep-08	700	\$ 25.00	\$ 17,500
410	01-Jul-09	924	\$ 23.36	\$ 21,585
417	01-Sep-08	1,234	\$ 30.00	\$ 37,020
500	01-Sep-08	2,180	\$ 28.00	\$ 61,040
503	01-Aug-08	674	\$ 29.00	\$ 19,546
517	01-Aug-08	8,565	\$ 25.00	\$ 214,125
613	01-Dec-08	1,323	\$ 26.00	\$ 34,398
Totals:		20,993		\$ 544,149
Wtd Average			\$ 25.92	

The leases above exhibit a range of \$23 to \$30/sq.ft. in the subject property, with a weighted average of \$25.92, indicating that a \$26.00 rent rate is not only achievable, but reasonable for the subject property.

As an assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year, lease rates that reflect typical market conditions as of July 01 are fundamental. There was no evidence provided to the Board that the characteristics and physical condition of the property had changed between July 1, the valuation date and December 31, the "characteristics and physical condition date" set out in *Municipal Government Act* s.289(2), to warrant a reduced July 01 net rental rate.

With respect to the sale of the subject property, notwithstanding that the sale may not have been used in the preparation of the assessment, the Board accepts the sale as an indication of the market value of subject property, albeit dated. As this evidence was not time adjusted to the current valuation date, it was of limited use to the Board in determining the current market value as of the valuation date.

**Issue 2:** The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.

**Decision - Issue 2:** The Board finds that a net market rent of \$26.00 / sq.ft. used in the assessment calculation is fair and equitable with similar and competing properties.

The range of recent leases within the subject further confirm that the Assessor's mass appraisal stratification of similar properties is appropriate in this instance, and that the subject is typical of the group of properties to which the \$26.00 rent rate has been applied. Further, whereas the only equity comparables presented to the Board are all assessed at the same \$26.00 rent rate, the equity argument fails.

#### **PART D: FINAL DECISION**

No change to the assessment roll is required. The assessment remains at \$21,780,000.

It is so ordered.

Dated at the City of Calgary in the Province of Alberta, this 23 day of JULY, 2010.

  
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J. Krysa  
Presiding Officer

**APPENDIX "A"**

## DOCUMENTS RECEIVED AND CONSIDERED BY THE CARB:

<b>NO.</b>	<b>ITEM</b>
1.	Exhibit C1 Complainant's Brief
2.	Exhibit R1 Respondent's Brief

**APPENDIX 'B'**

## ORAL REPRESENTATIONS

<b>PERSON APPEARING</b>	<b>CAPACITY</b>
1. Daryl Genereux	Representative of the Complainant
2. Kelly Gardiner	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.*