

**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:**

***Hudson's Bay Company, COMPLAINANT***

**and**

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

**before:**

***C. Griffin, PRESIDING OFFICER  
D. Pollard, MEMBER  
J. Kerrison, MEMBER***

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

**ROLL NUMBER: 075107805**

**LOCATION ADDRESS: 5115 – 17 Avenue S.E., Calgary**

**HEARING NUMBER: 57807 & 59909**

**ASSESSMENT: \$ 15,560,000.**

This complaint was heard on 26 day of July, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- Mr. James Laycraft, Q.C. - Wilson Laycraft, Barristers & Solicitors
- Mr. D. Hamilton - Altus Group
- Mr. F. Zinner - Hudson's Bay Company

Appeared on behalf of the Respondent:

- Mr. K. Gardiner

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

Not Applicable

**Property Description:**

The property under complaint is a Community Shopping Centre located in the Forest Lawn community of Calgary. The property consists of a free standing Zellers store, a free standing Sobey's grocery store, a free standing Parts Source automotive supply store and a free standing Domo gas bar. The property is located at 5115 – 17<sup>th</sup> Avenue S.E. It is only the Zellers store that is under complaint before this Composite Assessment Review Board (CARB).

**Issues:**

1. This Issue relates to the mezzanine space that is contained within the Zellers store. It is a space of approximately 6,048 Sq. Ft. which the Respondent currently has assessed at a rental rate of \$1/Sq. Ft. The Complainant contends that the subject mezzanine space should not be assessed as they do not pay rent for the space and it is superfluous to their needs for this store. The Complainant noted that it is not the \$1/Sq. Ft. rental rate that has been applied to the subject space that is the subject of this complaint, but rather it is the fact that the space has been assessed at all.
2. The Second Issue pertains to the vacancy rate applied to the subject Zellers store in the Respondent's application of the Income Approach to Value which has been applied to derive the estimated assessed value.

**Complainant's Requested Value:** \$ 14,340,000.

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

1. On behalf of the Complainant Mr. Frank Zinner, Director Real Estate Assessments, Hudson's Bay Company provided evidence to the CARB that the rental rate for all Zellers stores is based upon the footprint of the respective buildings only and that mezzanine space, if it exists at all, is not identified with any applicable rental rate in any of the leases for these properties including the subject property. He went on to say that the space within the subject property would have been removed (demolished) except that the concrete construction results in a demolition cost that cannot justify it's removal.

The Respondent provided evidence relating to similar mezzanine space in the adjacent Sobey's store that is also assessed with a rental rate of \$1/Sq. Ft. The Respondent also indicated to the CARB that the applied rate is less than the \$3/Sq. Ft. rate normally applied to storage space in properties assessed through application of the Income Approach to Value. Additionally, in their evidence the Respondent referred to photographs of the subject mezzanine space which clearly indicate that the space has been improved with shelving for storage purposes and that the space was clearly being utilized for storage purposes with such items as bicycles, complete with sales price tags attached, were being stored within the subject mezzanine space. It is the contention of the Respondent that the space in question is clearly being utilized by the Complainant and this utility is of value to the Complainant and therefore the space should be assessed.

The CARB agrees with the Respondent that the space in question is clearly being utilized by the Complainant for storage purposes as evidenced by the photographs in their submission before this Board. Additionally, the space in question has been improved by the Complainant with storage shelves which are also clearly being utilized as is also evidenced by the said photographs. It is the judgement of this CARB that the mezzanine space in question is clearly being utilized by the Complainant and thus it is of value to them. The fact that the lease for the property as a whole does not specifically identify a rental rate for the mezzanine space nor the fact that the said mezzanine space may or may not be specifically identified within the lease for the property is not, in the judgement of this Board, evidence of the space having no value. It seems logical to this CARB that if the space was truly of no value to the Complainant, then it would not be being utilized for any purpose by the Complainant.

2. With reference to the second issue, the Complainant introduced evidence relating to several properties which they deemed similar to the subject which have also been valued for assessment purposes through application of the Income Approach to Value and where the Respondent had applied a different vacancy rate than that applied to the subject property and this has resulted in an inequity in terms of the assessed value of the subject.


The Respondent assessor pointed out to the CARB that the properties the Complainant had chosen for comparison purposes were in fact not comparable to the subject property as the vast majority of same were free standing retail buildings of one type or another but none were of the same classification as the subject, namely Community Shopping Centres. The Respondent assessor also explained that the classification of the subject as a Community Shopping Centre stems from the fact that the property is anchored by two (2) tenants, namely Zellers and Sobey's. The applied vacancy rate is common to all similar Community Shopping Centres; however, the vacancy rate(s) applied to other classifications of properties can, and in fact does vary.

The CARB agrees with the Respondent that the properties presented for comparative purposes by the Complainant are not comparable to the subject property as none were from the same property classification; therefore, it may well be that they have different applied vacancy rates.

**Board's Decision:**

The assessment of the subject property is confirmed at:  
\$15,560,000.

DATED AT THE CITY OF CALGARY THIS 5<sup>th</sup> DAY OF AUGUST 2010.

  
for C. J. GRIFFIN  
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.*