

**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 Ltd., COMPLAINANT**

**and**

**The City Of Calgary, RESPONDENT**

**BEFORE:**

**J. Krysa, PRESIDING OFFICER  
D. Julien, MEMBER  
Y. Nesry, MEMBER**

A hearing was convened on July 27, 2010 in Boardroom 2, 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>156128308</b>
<b>LOCATION ADDRESS:</b>	<b>240 Midpark Way SE</b>
<b>HEARING NUMBER:</b>	<b>56456</b>
<b>ASSESSMENT:</b>	<b>\$27,300,000</b>

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

The subject property is a 310,980 square foot (sq.ft.) parcel of land improved with a 139,096 sq.ft. neighbourhood shopping centre constructed in 1979, and a 3,761 sq.ft. restaurant constructed in 1995, and paved surface parking. The development is known as Midnapore Mall.

**PART B: PROCEDURAL or JURISDICTIONAL MATTERS**

There were no procedural or jurisdictional matters raised by the parties.

**PART C: MATTERS / ISSUES**

The Complainant raised 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 indicated that the evidence and submissions would only apply to matter number 3, an assessment amount. The Complainant set out 9 reasons for complaint in Section 5 of the Complaint form, however at the hearing the Complainant stated only the following issues remained in dispute:

Issue 1: Rental rate should be reduced for equity and market value to \$14.00 per sq.ft. for spaces that are greater than 20,000 sq.ft. as evidently applied by the City of Calgary.

Issue 2: The vacancy rate should be increased to reflect the typical market value as of July 01, 2009 to 10%. Further the vacancy at the subject property is approximately 40%.

The Complainant requested an assessment of \$24,340,000.

**Issue 1:** Rental rate should be reduced (from \$16.00 per sq.ft.) for equity and market value to \$14.00 per sq.ft. for spaces that are greater than 20,000 sq.ft. as evidently applied by the City of Calgary.

The Complainant submitted the subject property's rent roll as of February 12, 2010 to illustrate that the current contact rent for the 23,000 sq.ft. CRU (commercial retail unit) space is \$16.00 per sq.ft., and the 2010 business assessment record indicating the business assessment rate to be \$14.00 per sq.ft. The Complainant argued that the market rent rate coefficient used in the preparation of a property assessment should be the same as that applied to a business assessment. [C1 pgs 22 to 50].

The Complainant also submitted a one page analysis of 37 market leases with commencement dates between 1997 and 2009 for "Box" stores with areas approximating 25,000 sq.ft., and a number of historical Municipal Government Board decisions from prior years to demonstrate that the rent rate for 20,000+ sq.ft. CRU areas should be \$15.00 per sq.ft. [C1 pgs 88 to 168].

Also provided were three equity comparables assessed at market rent coefficients of \$12.00 to \$14.00 per sq.ft., and two further equity comparables of properties exhibiting lease rates of \$16.00 per sq.ft. to demonstrate that the subject is inequitably assessed [C1 pg 67 to 87].

The Respondent submitted the assessment request for information (ARFI) form and rent roll received from the owner's representative on April 13, 2010 to illustrate that recent leasing activity within the subject supports the market rent coefficients for the various CRU size ranges, although the most recent lease for a \$20,000+ square foot CRU was the "Value Village" lease commencing in 2003, at a rate of \$16.00 per sq.ft. [R1 pgs 25 to 42].

The Respondent also provided a list of building permits related to the subject property and argued that as a result of recent renovations, the subject property should be re-classified from a B+ to an A-, and presented a recalculation with a higher vacancy allowance coefficients and a lower capitalization rate to arrive at a value indication of \$27,212,217. The Respondent's evidence of published coefficients used in the preparation of assessments did not indicate any differentiation between Classes B+ and A- for neighbourhood shopping centres, nor was there any explanation of why an A- classification would result in a lower value than a B+ classification. [R1 pgs 12 – 20]

### **Decision - Issue 1**

The Board finds there is insufficient relevant evidence to disturb the assessment with respect to the market rent rate.

Although the Complainant filed copious amounts of evidence, with some of it repeated several times within exhibit C1, the Board finds that the Complainant's comparable properties, and prior year decisions of the Municipal Government Board pertaining to power centres and other large developments are not similar in nature to the subject property. Included throughout exhibit C1, is abundant evidence that supports a rent rate coefficient of \$15.00 to \$16.00 per sq.ft. and very little support for the Complainant's requested \$14.00 per sq.ft. market rent coefficient.

With respect to the business assessment rate of \$14.00 per sq.ft. applied to the tenant currently occupying the space, the Board concurs with the comments of the Municipal Government Board in MGB 032/10, found at page 63 of exhibit C1, *"The MGB accepts that the NARV and LR rates arise from differing legal constructs, and for many reasons these rates can be different."*

**Issue 2:** The vacancy rate should be increased to reflect the typical market value as of July 01, 2009 to 10%. Further the vacancy at the subject property is approximately 40%.

The Complainant submitted the subject property's rent roll as of February 12, 2010 to illustrate that the current level of vacancy in the subject, at approximately 40% is atypical in relation to other neighbourhood shopping centres, and argued that this chronic vacancy issue should be reflected in the assessment [C1 pgs 22-40]. Notwithstanding this position the Board notes that the Complainant's requested assessment calculation is based on a 10% vacancy allowance coefficient.

In support of a 10% vacancy allowance, the Complainant submitted a vacancy study of community and neighbourhood shopping centres indicating that the average and median vacancy rate of CRU (commercial retail unit) space within these property types was 11.87% and 10.62% respectively [C1 pg 192].

The Respondent presented the recent assessment request for information (ARFI) forms for many of the properties in the Complainant's analysis, indicating levels of vacancy that were inconsistent with those set out in the analysis. As the Respondent's evidence included ARFI forms completed and signed by the building owners and managers, the Board finds it to be more compelling than the summary evidence of the Complainant which did not include any supporting documentary evidence.

The Respondent and Complainant both submitted that the Assessment Review Board has, in recent cases not accepted the Complainant's study in light of the Respondent's analysis, and as a result the Complainant did not pursue the matter in argument.


**Decision - Issue 2**

The Board finds that there was insufficient conclusive evidence to disturb the assessment with respect to the vacancy allowance.

**PART D: FINAL DECISION**

The assessment is confirmed at \$27,300,000.

Dated at the City of Calgary in the Province of Alberta, this 3 day of September, 2010.

  
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J. Krysa  
Presiding Officer

**APPENDIX "A"**

## DOCUMENTS RECEIVED AND CONSIDERED BY THE ASSESSMENT REVIEW BOARD:

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

**APPENDIX 'B'**

## ORAL REPRESENTATIONS

<b>PERSON APPEARING</b>	<b>CAPACITY</b>
1.	A. Izard
2.	B. Duban
	Representative of the Complainant
	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.*