

**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 29, 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>180077604</b>
<b>LOCATION ADDRESS:</b>	<b>8120 Beddington Boulevard NW</b>
<b>HEARING NUMBER:</b>	<b>57573</b>
<b>ASSESSMENT:</b>	<b>\$40,310,000</b>

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

The subject property is a 652,975 square foot (sq.ft.) parcel of land, improved with a 179,436 sq.ft. neighbourhood shopping centre constructed in 1980, and two small additions in 1991 and 1999, and paved surface parking. The development is known as Beddington Towne Centre.

**PART B: PROCEDURAL or JURISDICTIONAL MATTERS**

There were no procedural or jurisdictional matters raised by the parties during the course of the hearing.

**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 10 reasons for complaint in Section 5 of the Complaint form, however on page 3 of exhibit C1, only the following issues were identified to be in dispute:

- Issue 1: Rental Rates applied to the subject's CRU space are neither fair nor equitable.
- Issue 2: The vacancy allowances are neither fair nor equitable – rates of 4% to Anchor and 11% to the CRUs should be applied.
- Issue 3: The rate applied to the London Drugs is neither fair nor equitable – a rate of \$15.00 per sq.ft. should be applied.
- Issue 4: Rental rate of \$28.00 per sq.ft. should be applied to the Bank space.
- Issue 5: Rental rate of \$28.00 per sq.ft. should be applied to the restaurant space of Boston Pizza.

The Complainant requested an assessment of \$32,360,000 [C1 pg 4].

Issue 6: A subsequent issue arose from the different allocations of the total area amongst the various components of the assessment, between the Complainant's and the Respondent's evidence.

**Issue 1:** Rental Rates applied to the subject's CRU space are neither fair nor equitable.

In support of issue 1, the Complainant submitted the market rent coefficients applied to the various size ranges of CRU areas of 11 comparable properties to demonstrate that the subject is inequitably assessed [C1 pgs 32 – 43]. The average and median market rent coefficients calculated from the Complainant's comparables are as set out on the following page:

Commercial Retail Unit Size Ranges	Average of 11 Comparables	Median of 11 Comparables	Subject Coefficients
CRU 0 – 1,000 sq.ft.	\$24.50	\$25.00	\$26.00
CRU 1,001 – 2,500 sq.ft.	\$22.91	\$24.00	\$24.00
CRU 2,501 – 6,000 sq.ft.	\$21.91	\$23.00	\$23.00
CRU > 6,000 sq.ft.	\$19.80	\$21.00	n/a

The Respondent did not submit equity comparables in support of the coefficients applied to the above CRU size ranges.

### Decision - Issue 1

The Board finds the market rent coefficients applied to the CRU spaces have not been applied equitably or consistently throughout the market area. The median rates as determined in the Complainant's submission (\$25.00, \$24.00, \$23.00, and \$21.00 per sq.ft.) are found to be equitable for the subject property.

The Complainant's analysis of various neighbourhood shopping centres confirmed that the CRU spaces within the subject were not equitably assessed with similar and competing properties, most notably the Co-op development directly across Centre Street from the subject with significantly lower market rent coefficients applied to the CRU areas. The evident variance in market rent coefficients amongst obviously similar properties was explained by the Respondent during questions, that it is not the classification of an improvement that determines the rates assigned, but rather the (contract) rental rates an improvement can achieve.

**Issue 2:** The vacancy allowances are neither fair nor equitable – rates of 4% to Anchor and 11% to the CRUs should be applied.

With respect to the vacancy allowance coefficient of the subject's CRU space, 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 222]. The Complainant did not submit market evidence of anchor tenant vacancy, but provided comparables of anchor tenant spaces to demonstrate that vacancy allowances of 4% to 8.5% were applied to similar properties. [C1 pgs 141-200]

The Respondent submitted an analysis of the Complainant's study with revisions based on data acquired from the Assessment Request For Information (ARFI) forms and adjustments reflecting the exclusion of 2 specific properties that, it was argued, should not be considered typical of the current market [R1 pgs 122-126 and 157-308]. Also provided was a summary of vacancy statistics and copies of third party retail market reports to support the vacancy rates established by the assessor [R1 pgs 127-128 and 309-321].

The Respondent also submitted a list of 11 NW neighbourhood shopping centres with identical vacancy rates to that of the subject to demonstrate that that vacancy allowances of 1% and 4% for anchor tenants and CRU spaces were equitably applied, as well as a summary identifying that the Complainant's comparables are not neighbourhood shopping centres [R1 pgs 139, 144]

The Respondent and Complainant both indicated that the Assessment Review Board has, in recent cases, not accepted the Complainant's vacancy study in light of the Respondent's analysis, and the Respondent included several of the decisions in exhibit R1 in this regard.

### **Decision - Issue 2**

The Board finds that the current vacancy rate coefficients are supported by market evidence and are equitably applied amongst similar properties.

The Board was persuaded by the Respondent's market and equity evidence pertaining to neighbourhood shopping centre CRU and anchor tenant space.

Although the Complainant's "anchor tenant" comparables may have demonstrated some potential inequities with respect to the vacancy allowances of properties that may be considered as comparable, the Board accepted that the majority of the properties were not stratified as neighbourhood shopping centres and were awarded different coefficients (eg. capitalization rate, operating costs, etc.) as well as the different vacancy allowance. Therefore the Board was not convinced that the Complainant's comparison was valid, as the properties were not similar, nor valued similarly in other respects.

**Issue 3:** The rate applied to the London Drugs is neither fair nor equitable – a rate of \$15.00 per sq.ft. should be applied.

The Complainant argued that a 25,989 sq.ft. demised area currently occupied by "London Drugs" should be assessed with a market rent coefficient of \$15.00 per sq.ft.

In support of this argument the Complainant submitted an analysis of 37 leases dating from 1997 to 2009 to arrive at median, average and weighted average market rent rates of \$15.00, \$14.91 and \$14.81 per sq.ft. respectively. To establish that a market rent rate of \$15.00 would also be equitable in relation to other similar properties, the Complainant also provided two assessment calculations of other properties, indicating a market rent coefficients of \$16.00 per sq.ft. was relied on in the preparation of the 2010 assessments [C1 pgs 51-55].

The Complainant further submitted a number of Municipal Government Board and Assessment Review Board decisions respecting assessments of prior assessment years in support of the \$15.00 market rent request. [C1 pgs 56-134]

The Respondent provided market evidence of nine 9 leases dating back to 1996, in support of the current market rent coefficient applied to the disputed area [R1 pg 28].

To demonstrate that the subject property was equitably assessed the Respondent provided three 2010 business assessments that were assigned a net annual rental value (NARV) of \$18.00, however under cross examination the Respondent conceded that one of the comparables, as well as the subject property tenant, were revised to \$15.00 per sq.ft. by the Assessment Review Board, and rebuttal evidence was submitted by the Complainant to show that the remaining spaces were either vacant, or were leased for rates well below \$18.00 per sq.ft.

**Decision - Issue 3**

The Board finds that the \$18.00 market rent coefficient applied to the 25,989 sq.ft. "London Drugs" CRU is unsupported by market evidence, and inequitable in relation to other similar properties. A market rent rate of \$15.00 per sq.ft. is evident and equitable.

The Board gave little weight to the Complainant's lease analysis due to the significantly dated leases in the sample, and the range of lease rates from \$9.10 to \$20.75 per sq.ft., which the Board found were too wide ranging from which to establish a "typical" market rate. The Respondent's lease analysis was also of little use to the Board in determining an appropriate market rent as of the July 1, 2009 valuation date, as none of the leases represented NW market activity near the valuation date. The Board did however refer to the leases and lease renewals in the Complainant's analysis that commenced in the assessment year which supported the Complainant's position that a \$15.00 per sq.ft. market rent coefficient assigned to this area was reasonable.

The Board also gave little weight to the Complainant's historical decisions of the Municipal Government Board and Assessment Review Board, as the decisions reflected the Board's determinations of typical market rents well before the current valuation date of July 01, 2009.

**Issue 4:** Rental rate of \$28.00 per sq.ft. should be applied to the Bank space.

The Complainant did not submit any market evidence, or comparable assessments to demonstrate that the bank space within the subject was assessed incorrectly or inequitably in relation to similar and competing properties. Further, the bank space is currently assessed at a market rent coefficient of \$28.00 per sq.ft.

**Decision - Issue 4**

The Complainant has not put forth sufficient evidence to establish a *prima facie* case with respect to this issue.

**Issue 5:** Rental rate of \$28.00 per sq.ft. should be applied to the restaurant space of Boston Pizza.

The Complainant did not submit any market evidence, or comparable assessments to demonstrate that the restaurant space of "Boston Pizza" within the subject was assessed incorrectly or inequitably in relation to similar and competing properties.

**Decision - Issue 5**

The Complainant has not put forth sufficient evidence to establish a *prima facie* case with respect to this issue.

**Issue 6:** Allocation of the total area amongst the various components of the assessment.

The Complainant's submission and requested assessment was based on an allocation of various components that differed significantly from the original assessment. [C1 pg 244]

The Respondent conceded that the original assessment space allocations were inaccurate, and provided a recalculation of the assessment reflecting revised component areas with the original coefficients, indicating an increased assessment value. The Respondent requested that the Assessment Review Board set the assessment to the increased value. [R1 pg 418]

The Board accepts the Respondent's allocation of space types, which generally reflect the Complainant's evidence, and more closely reflect the total area as reported on the ARFI. The Board's findings with respect to the appropriate market rent coefficients that are at issue in this matter, are applied to these revised areas as outlined below:

Component	Respondent's Revised Area	Assessed Rate \$	Requested Area	Requested Rate \$	Decision (Area)	Decision (Rate \$)
Bank	11,098	\$28.00	11,098	\$28.00	11,098	\$28.00
CRU 0 - 1000	12,828	\$26.00	11,483	\$24.00	12,828	<b>\$25.00</b>
CRU 1001 - 2500	24,647	\$24.00	21,525	\$21.00	24,647	\$24.00
CRU 2501 - 6000	35,358	\$23.00	32,654	\$20.00	35,358	\$23.00
CRU 6001+	7,558	\$22.00	9,395	\$18.00	7,558	<b>\$21.00</b>
CRU Box Store	25,989	\$18.00	25,989	\$15.00	25,989	<b>\$15.00</b>
Kiosk	150	\$60.00			150	\$60.00
Super Market	54,792	\$13.00	54,792	\$13.00	54,792	\$13.00
Restaurant Dining	5,730	\$30.00	5,730	\$28.00	5,730	\$30.00
	<u>178,150</u>		<u>172,666</u>		<u>178,150</u>	

#### PART D: FINAL DECISION

The assessment is revised from \$40,310,000 to \$40,180,000.

Dated at the City of Calgary in the Province of Alberta, this 8 day of September, 2010.

  
 J. Krysa  
 Presiding Officer

**APPENDIX "A"****DOCUMENTS RECEIVED AND CONSIDERED BY THE ASSESSMENT REVIEW BOARD:**

<b>NO.</b>	<b>ITEM</b>
1.	Exhibit C1 Complainant's Brief
2.	Exhibit R1 Respondent's Brief (Part 1)
3.	Exhibit R2 Respondent's Brief (Part 2)
4.	Exhibit C2 Complainant's Rebuttal Evidence

**APPENDIX 'B'****ORAL REPRESENTATIONS**

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