

**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

A. Zindler, MEMBER

S. Rourke, MEMBER

A hearing was convened on July 5, 2010 in Boardroom 8 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:

ROLL NUMBER:	130150105
LOCATION ADDRESS:	9950 Macleod Trail SE
HEARING NUMBER:	59360
ASSESSMENT:	\$12,610,000

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a 194,187 square foot (sq.ft.) parcel of land improved with a 54,023 sq.ft. single storey, multi-tenant retail building constructed in 1973, and asphalt surface parking.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The Assessment Review Board derives its authority under Part 11 of the Act. No specific jurisdictional or procedural matters were raised 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 13 reasons for complaint in Section 5 of the Complaint form, however, the Complainant stated only the following issues, condensed from the reasons in Section 5 of the complaint form, were in dispute:

- Issue 1: The allocation of space is inconsistent with the nature of the subject property, and the rental rates should correspond with market value and reflect the individual Commercial Retail Unit (CRU) spaces
- Issue 2: The vacancy allowance is clearly incorrect and not reflective of current market norms, as even the subject site is 49.35% vacant for the past year.

The Complainant submits that a correct, fair and equitable assessment value is \$ 8,730,000, or alternatively \$9,890,000 [C1 pg 104 and 107].

Issue 1: The allocation of space is inconsistent with the nature of the subject property, and the rental rates should correspond with market value and reflect the individual Commercial Retail Unit (CRU) spaces.

The Complainant submits that as the subject property is currently demised into 4 individual retail spaces, each of the individual areas should be valued based on the typical market rent applicable to that size of CRU. The rental rates should correspond with market value and reflect the individual CRU spaces as follows:

CRU Sq.Ft. Range	Market Rent
2,501 to 6,000	\$20.00
6,000 to 15,000	\$15.00
Greater than 15,000	\$15.00

In support of the above, the Complainant submitted evidence of retail leases greater than 6,000 sq.ft., commencing between July 2004 and May 2008 [C1 pg 32], and a "Box Store" rental rate analysis of retail leases greater than 16,000 sq.ft., commencing between January 1997 and September 2009 [C1 pg 37].

The Complainant further provided a number of equity comparables of properties assessed at \$15 to \$16 rental rates for Business Tax, or for property assessment as revised by the Assessment Review Board or Municipal Government Board in 2009. [C1 pgs 40 to 56]

The Respondent submitted 4 leases of comparable freestanding retail properties signed between 1999 and 2009 indicating rent rates between \$18.00 and \$20.89 for properties ranging from 7,277 to 30,099 sq.ft., and presented the current assessed rates between \$18.00 and \$22.00 as equity comparables to indicate that they were all being assessed within the range of the subject [R1 pg 25]. The Respondent further indicated that the current format of the improvement does not prevent it from being further demised into smaller spaces.

The Respondent also submitted a "RealNet" retail transaction summary of the September 17, 2008 sale of the subject property at \$13,800,000 as evidence the assessment is not above market value [R1 pgs 14 – 15].

Decision- Issue 1

The Board finds that the recent sale of the subject property establishes a value that is within range of the current assessment. As there was no evidence that the sale was not "arms-length", the Board accepts that the assessment is a reasonable estimate of market value.

The Board gave little weight to the Complainant's equity comparables, as they were all based on 2009 business and property assessments, and 2009 decisions of the Board. As assessments must be prepared annually, and must reflect current market conditions, the argument of equity with the assessment value of a previous year is immaterial.

Issue 2: The vacancy allowance is clearly incorrect and not reflective of current market norms, as even the subject site is 49.35% vacant for the past year.

The Complainant submitted a vacancy study of CRU spaces within Community and Neighbourhood shopping centres concluding a CRU vacancy rate of approximately 11% [C1 pg 81], as well as the subject's rent roll as of December 2009, indicating that the largest CRU (formerly occupied by PetCetera) was vacant [C1 pg 27].

The Respondent's November 2008 rent roll indicated that PetCetera was occupying the 27,400 sq.ft. CRU at that time, and it was argued that the subject was not vacant on the valuation date of July 01, 2009, and had had 100% occupancy since the late 1990's.

Decision - Issue 2

The Board finds that a vacancy allowance of 4% is appropriate for the subject property.

The Complainants vacancy study was given little weight as it did not include any freestanding retail properties outside of shopping centre complexes, and did not represent a point in time, but rather several different time periods. Notwithstanding that there was no evidence provided as to the actual date of the (PetCetera) vacancy, the subject has enjoyed 100% occupancy since the

4 current leases were signed in 1998-99, and the PetCetera tenant only moved out as a result of a corporate bankruptcy and not due to the subject property's location or characteristics. As a result the Board accepts that a typical vacancy allowance is appropriate in this instance.

PART D: FINAL DECISION

The assessment is confirmed at \$12,610,000.

Dated at the City of Calgary in the Province of Alberta, this 06 day of August, 2010



J. Krysa
Presiding Officer

APPENDIX "A"

DOCUMENTS RECEIVED AND CONSIDERED BY THE COMPOSITE ARB:

NO.	ITEM
1.	Exhibit C1
2.	Exhibit R1

Complainant's Brief
Respondent's Brief

APPENDIX 'B'

ORAL REPRESENTATIONS

PERSON APPEARING	CAPACITY
1. A. Izard	Representative of the Complainant
2. B. Duban	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.*