

**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 8, 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:	049015902
LOCATION ADDRESS:	2023 34 Street NE
HEARING NUMBER:	59974
ASSESSMENT:	\$3,810,000

PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a 43,595 square foot (sq.ft.) parcel of land improved with a 15,929 sq.ft. single storey retail building constructed in 2000, with an 8,710 sq.ft. mezzanine floor and paved surface parking.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The Assessment Review Board derives its authority under Part 11 of the Act.

During the course of the hearing, and as a result of becoming aware of the multi tenant nature of the property the Complainant revised his requested assessment from \$2,810,000 in Exhibit C1 to \$3,060,000 in Exhibit C2 (undisclosed; prepared at 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 6 reasons for complaint in Section 5 of the Complaint form, however, the Complainant stated only the fourth and fifth issue remained in dispute:

Issue 1: The assessed rental rate applied to the main floor area is inequitable to similar properties.

Issue 2: The rental rate applied to the mezzanine is not supported by market indicators.

The Complainant submits that a correct, fair and equitable assessment value is \$2,810,000 [Exhibit C1], revised to \$3,060,000 [Exhibit C2].

Issue 1: The assessed rental rate applied to the main floor area is inequitable to similar properties.

The Complainant provided the assessment calculations of several properties indicating rental rates ranging from \$12.00 to \$26.00 per sq.ft. for areas ranging in size from 6,728 to 56,801 sq.ft. The Complainant highlighted specific lease rates for areas ranging from about 23,500 sq.ft. to 56,801 sq.ft. [Exhibit C1 pgs 23-41]

The Respondent provided 4 comparable properties assessed at a \$16.00 market rent rate with areas ranging from 12,186 sq.ft. to 18,116 sq.ft. to demonstrate equity for the 13,709 sq.ft. demised lease area. [R1 pg 23]

Decision: Issue 1

The Board finds that the assessed rental rate applied to the main floor area is equitable to that of similar properties.

The Board was persuaded by the Respondent's equity comparables that were of a similar size range to the subject property.

The Complainant's comparables that were highlighted to the Board were from 1.7 to 4 times larger than the subject's demised space of 13,709 sq.ft. The Board noted that the area most comparable to the subject, within the Complainant's submission (that was not highlighted for the Board) was the 17,436 sq.ft. CRU in the Sears building with a market rent of \$18.00. The Board also noted that several of the Complainant's calculations did not correspond with the Complainant's own evidence; for example the contradictory assessed rates per sq.ft. at pages 25 and 26, and pages 40 and 41, of Exhibit C1.

Issue 2: The rental rate applied to the mezzanine is not supported by market indicators.

The Complainant submitted a lease analysis of mezzanine spaces from a number of anchor tenant and big box store properties within the municipality and from other rural Alberta municipalities, to demonstrate that mezzanine areas do not typically attract a separate lease rate, and therefore add no value to an improvement [Exhibit C1 pgs 43 - 155].

The Respondent provided the rent rate coefficients from 4 comparable properties assessed at a \$10.00 to \$26.00 market rent rate with areas ranging from 4,010 sq.ft. to 9,837 sq.ft. to demonstrate equity to the subject's 6,300 sq.ft. mezzanine area. [R1 pg 25]

The Respondent also submitted the Assessor's Request for Information (ARFI) form and a rent roll from 2 properties in the municipality to refute the Complainant's assertion that mezzanine areas are never leased [R1 pgs 29 – 30]. Also provided were two 2010 Assessment Review Board decisions related to business assessment complaints about mezzanine areas within auto dealerships. The Board ruled, in both of the cases that the mezzanine did have a rental value beyond the nominal \$1.00 per sq.ft. request of the Complainant.

Decision: Issue 2

The Board finds that a mezzanine is an "improvement" as defined in s.284(1)(j) of the Act, and pursuant to s.291(1) of the Act an assessment must be prepared for the area.

In this instance, the Board finds that there was no relevant market evidence to invalidate the market rent rate established by the Assessor, and as the evidence submitted in this matter appears to be consistent with the evidence before the Board in the previous Assessment Review Board decisions contained in Exhibit R1, this Board concurs with their findings.

The subject property is not comparable to Complainant's lease comparables, which are of major anchor tenants and big box stores located in shopping and power centres. Lease agreements offered to these large area tenants often reflect the fact that they attract clientele to a site with a significant number of CRU spaces. Further, the Complainant's lease examples contain a relatively insignificant amount of mezzanine space in relation to their total leased area, and are therefore not comparable to the subject property, a freestanding retail building with a mezzanine area of over 50% of the main floor area, and fully functioning as a retail showroom, including elevator access from the mail level.

Although there may be instances where a mezzanine area does not attract a separate lease rate but is included in the rental rate applied to the main floor area, for the purposes of property assessment an allocation of a rental rate consistent with the use of the space appears to be a reasonable approach to equitably distinguish those properties with functional mezzanine areas, from those properties without such characteristics.

PART D: FINAL DECISION

The assessment is confirmed at \$3,810,000.

Dated at the City of Calgary in the Province of Alberta, this 19 day of August, 2010



J. Krysa
Presiding Officer

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

NO.	ITEM
1.	Exhibit C1 Complainant's Brief
2.	Exhibit C2 Complainant's revised request - calculation
3.	Exhibit R1 Respondent's Brief

APPENDIX 'B'**ORAL REPRESENTATIONS**

PERSON APPEARING	CAPACITY
1. A. Izard	Representative of the Complainant
2. S. Turner	Representative of the Respondent
3. D. Joehnck	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.*