

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460(4).

between:

Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

B. Horrocks, PRESIDING OFFICER

J. Kerrison, MEMBER

J. Massey, MEMBER

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

ROLL NUMBER:	200121077
LOCATION ADDRESS:	8888 COUNTRY HILLS BV NW
HEARING NUMBER:	59460
ASSESSMENT:	\$76,290,000

This complaint was heard on the 4th day of October, 2010 at the office of the Assessment Review Board located at 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2

Appeared on behalf of the Complainant:

- Mr A. Izard (Altus Group Ltd.)
- Mr. B. Dell (Wilson Laycraft)

Appeared on behalf of the Respondent:

- Ms. B. Thompson
- Mr. E. Lee

Others

Ms. B. Soulier (AEC INTERNATIONAL) representing Walmart
Ms. S. Turner

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

Preliminary Issue #1: Admissibility of "Summary of Testimony and Willsay of Frank Zinner".

The Respondent advised that the above evidence was due on Monday August 23, 2010, but was not received until Tuesday August 24, 2010 - one day late. The Respondent requested the materials not be allowed as evidence.

The Complainant advised that a communication breakdown had occurred between Altus Group Ltd. and Wilson Laycraft resulting in the late submission.

The Complainant further advised that the submission contained materials that were the same as those heard by a previous Business Assessment Review Board and that the Respondent was familiar with the materials.

The Board finds the Complainant failed to disclose this particular evidence pursuant to *Matters Relating to Assessment Complaints Regulation* (MRAC) Section 8(2)(a)i.

Further, MRAC section 9(2) requires that "A Composite Assessment Review Board must not hear any further evidence that has not been disclosed in accordance with section 8."

As a result, the "Summary of Testimony and Willsay of Frank Zinner" is not allowed.

Preliminary Issue #2: Complainant request to "seal" certain evidence.

The Complainant requested that the evidence contained in submissions labelled C-1 & C-2 be sealed for reasons of business confidentiality.

The Board advised that it would endeavour to protect the confidentiality of the materials, but that it could not guarantee protection because the hearings are open to the public and the proceedings are recorded.

Preliminary Issue #3: Respondent request to correct an error.

The Respondent advised that the original assessment had included the Subway and the Dixie Lee Chicken in the restaurant/fast food category. With the agreement of the Complainant, the associated area had been reassigned to the CRU 1001<2500 category. The assessment had been recalculated accordingly on Page 466 of R-1. The Parties agreed to the recalculation. The Board allowed the correction.

Property Description:

The subject property, commonly referred to as *Royal Oak Centre*, is a 27.20 acre parcel located in the Royal Vista community in NW Calgary. The site contains a bank, a multitenant building with London Drugs and Home Outfitters as anchor tenants, a free standing Big Box building occupied by Walmart, a multitenant building occupied by Sobey's supermarket and two smaller multitenant buildings. The buildings were constructed in 2003 and 2004 and are considered A+ quality, with one building rated A2. The total assessable building area is 337,439 sq. ft. The sub property use is CM1402 Retail-Shopping Centres-Community.

Issues:

The Assessment Review Board Complaint form contained 17 Grounds for Appeal. At the outset of the hearing the Complainant advised that the Grounds for Appeal had been revised and that he would provide evidence and argument with respect to 12 of those grounds, namely:

Issue #1 "The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Alberta Regulation 220/2004."

Issue #2 "The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian courts."

Issue #3 "The classification of the subject premise is neither fair, equitable, or correct."

Issue #4 "The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties."

Issue #5 "The assessment of the subject property is in excess of its market value for assessment purposes."

Issue #6 through Issue #10 are specific to rental rates as follows:

Issue	Space Type	Assessed Rent Rate \$/ sq. ft.	Requested Rent Rate \$/ sq. ft.
#6	Walmart	10.00	8.00
#7	CRU 1000-2500	33.00	24.00
#8	CRU 2501-6000	30.00	23.00
#9	CRU >6000	27.00	21.00
#10	Box Stores	24.00	15.00

Issue #11 "The municipality has neither correctly, nor equitably, calculated and provided the correct allocation of space for this particular property as identified by the annual Rent Roll or its physical condition as a property as of December 31."

Issue #12 "The assessed vacancy allowance applied to the subject property should be increased to 4%"

Complainant's Requested Value: \$58,610,000

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

There was no specific evidence or argument presented with respect to issues 1 thru 5.

Issue #6 The assessed rental rate applied to the subject property should be \$8 per square foot. (Big Box).

The Complainant evidence was labelled C-1.

The Complainant, at page 45, provided the Tenant Rent Roll for Royal Oak Centre which clearly identified the lease entered into by Walmart on October 2, 2003 at a lease rate of \$10.00 per square foot and the term was for 20 years.

The Complainant submitted 2010 Retail Anchor Tenant Rental Rate Analysis labelled C-3.

The Complainant, at page 45, provided 7 Calgary Rental Rate comparables for big box stores including Canadian Tire, Zellers, Walmart Canada and Rona Home and Garden. The Face Rates ranged from a low of \$4.00 per square foot to a high of \$14.50 per square foot. The Average Face Rate was \$8.95 per square foot.

The Respondent Assessment Brief was labelled R-1.

The Respondent, at page 130, provided 2010 City's Lease Comparables which included 7 purported lease comparables with Lease Rates ranging from a low of \$9.59 per square foot to a high of \$15.27 per square foot. The subject lease at \$10.00 per square foot was included in the list.

The Board finds the current lease for the big box (Walmart) at \$10.00 per square foot to be the most compelling evidence regarding this retail space.

This issue was also argued in the combined Hearing #59806 & #59810 (decision number CARB 1818.2010-P) wherein the Board confirmed the rental rate for Walmart to be \$10.00 per square foot.

Issue #7 The assessed rental rate applied to the subject property (CRU 1000< 2500) should be \$24.00 per square foot.

The Complainant, on page 101 of C-1, provided CRU Space Comparison Summary which contained 13 comparables from Shopping Centres in NW Calgary. The average lease rate was \$23.77 per square foot and the median was \$24.00 per square foot. The Complainant argued

that in most cases the assessed rents are not being achieved.

The Respondent at page 462 of R-1 provided 2010 City of Calgary – Retail NW Lease Sample which contained examples of 16 leases entered into between April 2007 and February 2009 with rental rates ranging from a low of \$27.99 per square foot to a high of \$40 per square foot and an average rental rate of \$32.68 per square foot in support of the assessed rental rate of \$32.00 per square foot.

The Board finds overwhelming evidence from the Complainant in support of the \$24.00 per square foot rate requested.

Issue # 8 The assessed rental rate applied to the subject property (CRU 2501<6000) should be \$23.00 per square foot.

The Complainant, at page 101 of C-1, provided CRU Space Comparison which contained 13 comparables from Shopping Centres in NW Calgary. The average lease rate was \$22.77 per square foot and the median was \$ 23.00 per square foot.

The Respondent, at page 464 of R-1, provided 2010 NW Retail CRU 2501<6000 sq. ft. Lease Comps which contained 6 leases from two different Shopping Centres in NW Calgary with average lease rates of \$34.29 per square foot.

The Board finds the evidence from the Complainant indicating a predominant rental rate of \$23.00 per square foot to be more compelling.

Issue #9 The assessed rental rate applied to the subject property (CRU >6000) should be \$21.00 per square foot.

The Complainant, at page 101 of C-1, provided CRU Space Comparison which contained 7 comparables from Shopping Centres in NW Calgary. One of the comparables at \$16.00 per square foot was considered to be an outlier. The average lease rate of the remaining five is \$22.00 per square foot.

The Respondent, at page 465 of R-1, provided 2010 NW Retail 6000+ sample leases of 3 comparables from the same Shopping Centre in NW Calgary. The lease rates were \$29.50, \$33.00 and \$36.00 per square foot.

The Board finds the appropriate rate to be \$22.00 per square foot.

Issue #10 The Big Box assessed rental rate is incorrect and should be no higher than \$15.00 per square foot.

The Complainant, at page 45 of C-1, provided the Tenant Rent Roll which included Home Outfitters with a rental rate of \$15.00 per square foot and London Drugs with a rental rate of \$19.50 per square foot.

The Respondent, at page 43 of R-1, provided Altus's Comparable Market Leases – Reworked to include a number of more current leases that were not included in Altus's work. The average for 2 years, not including *post facto* leases, was \$19.48 per square foot.

The Board finds the evidence from the Respondent to be more supportive of the \$18.00 per square foot rental rate applied.

Issue #11 The municipality has neither correctly, nor equitably, calculated and provided the correct allocation of space for this particular property as identified by the annual rent roll or its physical condition as a property as of December 31.

The Complainant, on page 45 of C-1, provided the Tenant Rent Roll which identifies the Totals for Occupied Space to be 337,419 square feet.

The Respondent, on page 30 of R-1, provided the Non-Residential Properties - Income Approach Valuation which totalled 337,439 square feet.

The Board finds the difference of 20 square feet to be insignificant but will rely on the information from the Rent Roll when it recalculates the Income Approach Valuation.

Issue #12 The assessed Vacancy Allowance applied to the subject property should be increased to 4%.

The Complainant, at page 351 of C-2, provided Community – Neighborhood Shopping Centre CRU Vacancy Study which identified the vacancy for Royal Oak Centre CRU space to be 5.13%.

In addition, on Page 352 of C-2, he provided the Royal Oak Centre Rent Roll which indicated the current vacancy to be 5.98%. The complainant had earlier argued that one of the tenants (Reitman's) was also experiencing some difficulty.

The Respondent, at page 54 of R-1, provided City's Vacancy Equity which contained 8 comparable retail Shopping Centres in NW Calgary that had assessed vacancy rates of 2% for the CRU spaces. In addition, the Respondent, at page 55 and following provided a number of Assessment Review Board (ARB) decisions confirming the 2% vacancy rate for CRU spaces.

The Board finds the applied vacancy rate of 2% for the CRU spaces to be well supported.

Board's Decision:

The 2010 assessment is reduced to \$64,530,000.

Because there are so many changes to the rental rates as determined by the Board, it becomes necessary to recalculate the assessment utilizing a vacancy rate of 1% for anchor, big box and supermarket and 2% for all other categories; a non-recoverable rate of 1%; an operating cost allowance of \$8.50 per square foot and a capitalization rate of 8%, as indicated below:

Category	Area Sq. ft	Rate \$/ sq. ft	Income \$	Vacancy Allowance \$	Non- Recoverable Allowance \$	Operating Cost Allowance \$
anchor	68,411	18.00	1,231,398	12,314	12,191	5,815
big box	132,228	10.00	1,322,280	13,223	13,091	11,239
supermarket	42,882	15.00	643,230	6,432	6,368	3,645
bank	5,655	28.00	158,340	3,167	1,552	961
Cru 1001-2500	8,611	24.00	206,664	4,133	2,066	1,463
Cru 2501-6000	46,126	23.00	1,060,898	21,218	10,397	7,841
Cru 6000+	31,906	22.00	701,932	14,039	6,879	5,424
Mezz	1,600	1.00	1,600	32	16	272
Total	337,419		5,326,342	74,558	52,560	36,660

Potential Gross Income \$5,326,342
 Vacancy \$74,558
 Effective Gross Income \$5,251,784
 Less non-recoverables \$52,560
 Operating costs \$36,660
 Net Operating Income \$5,162,564

Value \$5,162,564 = 8% \$64,532,050 or \$64,530,000 (truncated)

DATED AT THE CITY OF CALGARY THIS 28 DAY OF October 2010.


 B. Horrocks
 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.