

**CALGARY
ASSESSMENT REVIEW BOARD
REVISED 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 Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Reimer, PRESIDING OFFICER

D. Pollard, MEMBER

A. Zindler, MEMBER

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

ROLL NUMBER: 053146031

LOCATION ADDRESS: 580 36 St NE

HEARING NUMBER: 57721

ASSESSMENT: \$120,270,000

This complaint was heard on 29 day of September, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1

Appeared on behalf of the Complainant:

- *Andrew Izard, Altus Group Ltd., Agent*
- *John Thomas, Altus Group Ltd., Agent*

Appeared on behalf of the Respondent:

- *Edwin Lee, Assessor*

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

There was no objection to the composition of the Composite Assessment Review Board (CARB).

Following the presentation of the Respondent, the Complainant submitted two documents as rebuttal. The Respondent objected to one document entitled "Mezzanine Space Rental Analysis", stating that the information in the document was not submitted in rebuttal of the Respondent's evidence but rather as supporting documentation for the Complainant's original submission. The Complainant countered that he had not expected the Respondent to continue to oppose his argument regarding mezzanine space and had, therefore, only submitted a skeleton argument with his original submission. He stated that the document was rebuttal because he had been required to submit further evidence to counter the Respondent's continued opposition to his mezzanine space argument.

The CARB carefully considered both sides of the debate and refused to accept the "Mezzanine Space Rental Analysis" document as rebuttal. The CARB reasoned that the Complainant had known from the start that he intended to argue the issue and had indeed included the cover page and the index from the document in his original submission. The Respondent had not raised the issue but had merely voiced opposition to the Complainant's position. The Complainant had ample opportunity to include the document in his original submission and should have done so.

Property Description:

The subject property is a regional shopping mall known as Marlborough Mall. It was constructed in 1972 and 1976 with a total rentable area of 568,925 sq. ft. on a 45.61 acre site.

Issues:

On the Assessment Review Board Complaint Form the Complainant had checked both box 3, the assessment amount, and box 4, the assessment class. The Complainant indicated that he intended to only present evidence regarding the assessment amount and, consequently, the CARB will only address that issue.

Complainant's Requested Value:

On the Assessment Review Board Complaint Form the Complainant had requested a value of \$102,730,000. This was revised at the hearing to \$102,850,000.

Position of the Parties:

The Complainant stated that there were four sub-issues which were in dispute. These included the rental rate applied to a 17,852 sq. ft. mezzanine in the Wal-Mart portion of the subject property, the capitalization rate (cap rate) applied to the property, the rental rate applied to a gas bar on the property and the rentable area of the property.

The Complainant requested a rental rate of \$1/sq. ft. be applied to the 17,852 sq. ft. mezzanine area of the Wal-Mart store. In support of this request he provided samples of leases, including the lease for the subject Wal-Mart, which specifically excluded mezzanine space as a chargeable area. He also provided, on pages 86 through 120 of exhibit C2, Income Approach Valuations of properties where a rental rate of \$1/sq. ft. had been applied to mezzanine space. On pages 247 through 315 of exhibit C3 he provided photographs and additional Income Approach Valuations of properties where a rental rate of \$1/sq. ft. had been applied to mezzanine space.

In support of his request that the cap rate be increased from 7.00% to 7.50%, the Complainant provided, on page 48 of exhibit C2, a table showing that Tier One Regional Centres have considerably higher sales per sq. ft. than Tier Two Regional Centres, yet there is only a .25% difference in the cap rate. On page 49 of exhibit C2, the Complainant provided information indicating that the cap rate for Tier Two Regional Malls had been increased from 6.25% to 6.50% by a Municipal Government Board (MGB) decision for the 2009 tax year. He also indicated that this was the same cap rate that had been applied to Power Centres, and argued that this relationship between Tier Two Regional Malls and Power Centres should be continued. The City of Calgary had increased the cap rate for Power Centres to 7.50% for the 2010 tax year.

On pages 69 through 74 of exhibit C3 the Complainant provided photographs and measurements of the gas bar. This gas bar is located in the parking lot of the subject property and had not been included in the property assessment. It consists of a carwash and convenience store, both of which are currently closed and non-operational, and two islands with gas pumps, which are pay at the pump only. The Complainant argued that \$45,000, which is the minimum rental rate used by the City of Calgary for gas bars, would be a fair rental rate, as neither the convenience store nor the carwash are operating. His measurements also indicated that the convenience store is less than 1000 sq. ft., which is the cut-off point used by the City for the minimum rate.

On page 122 of exhibit C2, the Complainant submitted a rent roll reconciliation in support of revising the rentable area of the subject property. Under questioning from the Respondent, it became evident that there were a number of errors in the document and the Complainant withdrew his request for a revision to the rentable area of the subject property.

The Respondent stated that the City relies on information that it receives from the property owner on the Assessment Request for Information (ARFI) and that the City was unaware that the Wal-Mart space included a mezzanine area. The Respondent stated that the subject Wal-

Mart is different than other properties which have mezzanine space assessed using a rental rate of \$1 /sq. ft. He also stated that storage space which is not on the main floor, such as basement storage, would normally be assessed at \$3/sq. ft.

The Respondent provided, on page 67 of exhibit R1, a chart, including the subject property, which showed the cap rate applied to similar regional malls. All had a cap rate of 7.00% with the exception of Westbrook Mall, which the Respondent explained was mistakenly included, as it is a community mall and has a cap rate of 8.00%.

Board's Decision:

The CARB agrees that mezzanine storage space should rent at a lower rate than main floor retail space. While the Respondent mentioned that basement storage space would be assessed at a rental rate of \$3/sq. ft., he did not advance an argument that mezzanine space should be assessed at that same rate. The preponderance of evidence is that other similar mezzanine spaces are assessed using \$1/sq. ft. The taxpayer is entitled to equity. The CARB orders that the 17,852 sq. ft. mezzanine area of the Wal-Mart store be assessed at a rental rate of \$1/sq. ft.

The CARB finds that the Complainant has failed to prove that the cap rate used is incorrect. The Respondent's evidence was that a cap rate of 7.00% has been used for all similar properties. A regional mall is not the same as a power centre and the CARB finds no reason to align the cap rate used for regional malls with that used for power centres. The sale of Sunridge Mall, provided on pages 42 through 45 of exhibit R1, while post facto, indicates a cap rate of 6.8%, which supports the Respondent's position. The cap rate is confirmed at 7.00%.

The CARB finds that the gas bar kiosk has an area of less than 1000 sq. ft. and, therefore, should be assessed at a rent of \$45,000. The CARB also finds that a rent of \$35,000 should be applied to the carwash. The building exists and, whether vacant or not, should be assessed. This brings the total rent to \$80,000 for the gas bar area. This is supported by the rent roll on page 42 of exhibit C2, which shows an actual rent for the gas bar of \$78,000.

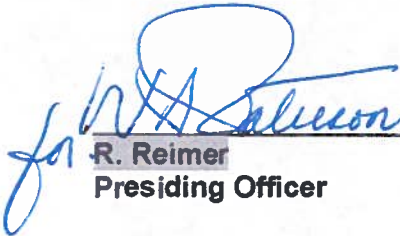
The CARB confirms the rentable area at 568,925 sq. ft.

The CARB has recalculated the assessment as follows:

<u>Space Type</u>	<u>Rentable Area</u>	<u>Net Rent</u>	<u>Total Rent</u>
Sears	135,915	\$5.00	\$679,575
Wal-Mart	141,947	\$5.00	\$709,735
CRU<1,000	19,539	\$45.00	\$879,255
CRU 1,000-2,500	47,998	\$30.00	\$1,439,940
CRU 2,501-6,000	101,859	\$25.00	\$2,546,850
CRU >6,000	8,859	\$20.00	\$777,180
ATM Kiosk	10	\$750.00	\$7,500
Food Court Space	6,543	\$150.00	\$981,450
Office	50,876	\$14.00	\$712,264
Storage	5,582	\$15.00	\$83,730
Wal-Mart Mezzanine	17,653	\$1.00	\$17,653
Kiosk	2,128	\$250.00	\$532,000
Gas Bar		\$80,000.00	\$80,000
Potential Gross Income			\$9,457,132

Major Space Vacancy @1%	\$13,893
CRU Space Vacancy @ 2%	\$146,911
Office Space Vacancy @ 9%	\$64,104
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Effective Gross Income	\$9,232,224
Major Space Typical Vacancy @ \$3.00	\$2,779
CRU Space Typical Vacancy @ \$28.39	\$4,692
Office Space Typical Vacancy @ \$15.41	\$4,579
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Vacant Space Shortfall	\$212,104
Non-Recoverable Allowance @ 4%	\$369,289
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Net Operating Income	\$8,650,831
Capitalization Rate	7%
Value Sub-total	\$123,583,300
Less Tax Exemptions	\$3,197,500
Valuation Conclusion	\$120,385,800
Total Taxable Valuation	\$120,380,000

DATED AT THE CITY OF CALGARY THIS 17th DAY OF DECEMBER 2010.



R. Reimer
Presiding Officer

Appendix A:

Documents submitted by the Parties and considered by the CARB

1. C1 Assessment Review Board Complaint Form
2. C2 Evidence submission of the Complainant
3. C3 Rebuttal Submission of the Complainant
4. C4 Assessment Valuation
5. R1 Assessment Brief

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.*