

**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 Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

M. Vercillo, PRESIDING OFFICER

K. Coolidge, MEMBER

R. Deschaine, MEMBER

This is a complaint to the Calgary Composite Assessment Review Board (CARB) 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: 757109905

LOCATION ADDRESS: 250 SHAWVILLE WAY SE

HEARING NUMBER: 59240

ASSESSMENT: \$ 11,430,000

This complaint was heard on 22nd day of November, 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:

- Mr. A. Izard (Altus Group Ltd.)

Appeared on behalf of the Respondent:

- Mr. K. Gardiner (The City Of Calgary)

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

The CARB derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

Property Description:

The subject property is a Canadian Tire commercial retail property located in the Shawnessy community of SE Calgary. The building has a net rentable area of approximately 92,721 square feet (SF), including 4,729 SF of Mezzanine space. The building is situated on an assessable land area of approximately 261,356 SF and is part of a shopping or "power" centre.

The property is assessed using the Income Approach to value with the following parameters:

- Main floor of 87,952 SF is assessed at a rate of \$10.00 per SF with a vacancy rate of 1%.
- Mezzanine space of 4,769 SF is assessed at a rate of \$1.00 per SF with a vacancy rate of 2%.
- Operating costs of \$9.00 per SF at a non-recoverable rate of 1%.
- A Capitalization rate (cap rate) of 7.5%

Issues:

The CARB considered the complaint form together with the representations and materials presented by the parties. The matters or issues raised on the complaint form are as follows:

1. The subject property is assessed in contravention of Section 293 of the *Municipal Government Act and Alberta Regulation 220/2004*.
2. The use, quality, and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirement of Section 289 (2) of the *Municipal Government Act*.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.
4. This Notice is filed based on information contained in the Assessment Notice as well as preliminary observations and information from other sources. Therefore the requested assessment is preliminary in nature and may change.
5. The classification of the subject premise is neither fair, equitable, or correct.
6. The assessment of the subject property is not fair and equitable considering the

- assessed value and assessment classification of comparable properties.
7. The assessment of the subject property is in excess of its market value for assessment purposes.
 8. The assessed rental rate applied to the Retail Anchor space within the subject property should be \$8.00 per SF.
 9. The assessed cap rate is incorrect and should be 8.5%.
 10. The assessed vacancy allowance applied to the subject property should be increased to reflect the current market conditions for the mezzanine retail spaces at 4%.
 11. The assessed vacancy allowance applied to the subject property should be increased to reflect the current market conditions for the Retail Anchors at 4%.

However, as of the date of this hearing, the Complainant addressed the following issue:

1. The rental rate applied to the subject is inappropriately applied and is inconsistent with the equitable interpretation of space in the same parking lot and the business assessment of the subject. Therefore, the rental applied to the subject in the assessment calculation should be reduced accordingly to \$8.00 per SF.

Complainant's Requested Value:

\$7,520,000 on the complaint form revised to \$9,130,000 at this hearing.

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

ISSUE 1: The rental rate applied to the subject is inappropriately applied and is inconsistent with the equitable interpretation of space in the same parking lot and the business assessment of the subject. Therefore, the rental applied to the subject in the assessment calculation should be reduced accordingly to \$8.00 per SF.

The Complainant provided the following evidence with respect to this issue:

- External pictures of the "Shawnessy" Power Centre development showing the placement of the subject in relation to one other anchor tenant; Zellers.
- Internal pictures comparing the Zellers property to the subject Canadian Tire property.
- A 2009 Assessment Review Board (ARB) hearing #0550/2009-P regarding two Zellers properties, including the Zellers at 275 Shawville BD. SE, which shares the parking lot with the subject. In that hearing, the ARB found that the Shawville Zellers property should be reduced from an assessment rate of \$10.00 per SF to an assessment rate of \$7.00 per SF, which approximated its actual rental rate.
- A 2010 Income Approach to value of the adjacent Zellers assessed at a rate of \$8.00 per SF.
- A listing of 2009 "Big Box" equity comparables showing the assessment rates of Wal-Marts, Zellers, Superstores, RONAs, Home Depots, and Costco's, all with an assessment rate of \$10.00 per SF.
- A 2010 Local Assessment review Board (LARB) hearing #0494/2010-B, which found that the Business Assessment of the subject property should be reduced to \$8.00 from the original Business assessment of \$10.00 per SF.
- A "Retail Anchor Tenant Rental Analysis" which compared lease "face" rates and assessment rates of the subject with nine other similar businesses of comparable size,

in other shopping centres. The following information was highlighted:

- Face rates:
 - Canadian Tire (Beacon Hill Centre): \$14.50.
 - Three Zellers: ranged from \$4.00 to \$8.00.
 - Two RONAs: ranged from \$9.39 to \$14.50.
 - Four Wal-Marts: ranged from \$6.85 to \$10.00.
 - Median: \$7.90, Average: \$8.95, Weighted average: \$8.78.
- Assessment rates:
 - Canadian Tire (Beacon Hill Cent): \$10.00.
 - Three Zellers: \$8.00.
 - Two RONAs: \$10.00.
 - Four Wal-Marts: ranged from \$7.00 to \$10.00.
 - Median: \$9.00, Average: \$8.60, Weighted average: \$8.62.
- A number of prior year decisions from Calgary Assessment Review Boards and Municipal Government Boards (MGB) reducing the Business or Property assessment rates for various retail stores such as; Home Depot, IKEA, Zellers, Wal-Mart, Real Canadian Superstore, Canadian Tire (including the subject), RONA and Costco.

The Complainant concluded his analysis by indicating that the assessment of the subject property should have an equitable assessment rate of \$8.00 per SF applied to the main floor area of 87,952 SF. In doing so, an equitable assessment of \$9,130,000 would be derived.

The Respondent provided the following evidence with respect to this issue:

- A table entitled "2010 Lease Rate Comparables". The table provided a listing of six Calgary lease rate comparables including Trail Appliances, two Canadian Tires, two RONAs and a Wal-Mart. The table highlighted the following information on these properties:
 - Net rentable area range (SF): 72,053 to 152,313.
 - Lease rate per SF range: \$9.59 to \$14.50.
- A listing equity comparables to the subject including Canadian Tires, RONAs, Costco's, Real Canadian Superstores, Totems, and Wal-Mart's showing that many of the 2010 CARB decisions have confirmed the \$10.00 assessment rates used by the City of Calgary. In addition many copies of those decisions were included for reference.
- MGB Board Order 020/10 supporting the Respondent's assertion that "Zellers have long been regarded as not comparable to Wal-Mart for reasons of quality of the improvements. But is more determinative for the purposes of this appeal that Zellers also does not have a grocery component, and is dissimilar by reason of content of the improvements too."

The Respondent concluded his analysis by indicating that the subject's assessment rate of \$10 per SF applied to the main floor area is equitably applied.

Decision: Issue 1

In view of the above considerations, the CARB finds as follows with respect to Issue 1:

- The assessment rate of \$10.00 applied by the Respondent to the main floor space of the subject is inequitable with its business assessment and inequitable with respect to the similar property (Zellers) sharing the same parking lot and for the following reasons:
 - The Complainant's pictures showed that the subject was indeed comparable in all material respects to the adjacent Zellers building. Specifically, size, building structure and design, and internal fit and finish were deemed similar by the

CARB. In addition, unlike the MGB Board Order 020/10 which considered comparing Wal-Mart to Zellers, the subject does not (similar to Zellers) have a grocery component. The 2010 assessment rate applied to the adjacent Zeller's main floor space is \$8.00 per SF.

- An assessment rate of \$8.00 applied to the main floor space of the subject is not unreasonable in consideration of the lease rate comparables submitted by both parties.
- Although this CARB is not bound by previous ARB or MGB decisions supporting or revising assessment rates used by the City of Calgary in assessing Big Box stores, the CARB finds no compelling reason to disagree with the recent Business assessment decision of the subject; LARB 0494/2010-B. The decision of that Board was; "While the vast majority of the evidence supported the assessment, the best comparable was the Zellers right next door that even shared the same parking lot. It was in the big box retail space type and was assessed at \$8/ sq. ft."

Board's Decision:

The Board revises the assessment to \$9,130,000.

DATED AT THE CITY OF CALGARY THIS 25 DAY OF November 2010.



Michael A. Vercillo

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.*