

**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, Revised Statutes of Alberta 2000 (the Act).

**between:**

***Marble Arch Properties Ltd. (as represented by Altus Group Ltd.), COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***C. McEwen, PRESIDING OFFICER  
K. Coolidge, MEMBER  
D. Julien, 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 2011 Assessment Roll as follows:

**ROLL NUMBER: 054013503**

**LOCATION ADDRESS: 1107 33 ST NE**

**HEARING NUMBER: 64204**

**ASSESSMENT: \$19,070,000**

This complaint was heard on the 21<sup>st</sup> day of June, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- K. Fong

Appeared on behalf of the Respondent:

- D. Zhao

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

The Respondent raised a preliminary matter regarding the Complainant's rebuttal disclosure, specifically, that the rebuttal not be heard as the Complainant had not provided a Summary of Testimonial Evidence as required under M.R.A.C. 8(2)(c) which states

(c) the complainant must, at least seven days before the hearing date, disclose to the respondent and the composite assessment review board the documentary evidence, **a summary of testimonial evidence**, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in rebuttal to the disclosure made under clause (b) **in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing.**

The Complainant responded that *most* of the individual pages of the rebuttal evidence contained a summary of the evidence presented on the page and, therefore, that the requirement of the regulations had been met. The Complainant asked that the rebuttal evidence be accepted.

The Board adjourned briefly to examine the Complainant's rebuttal evidence and found that most of the pages, if not all, contained a brief summary of the page's content. The Board decided to accept the summary and to hear the rebuttal evidence, however, cautioned the Complainant that the summary barely met either the intention of the regulations or the expectations of the Board. The Complainant was directed to speak only to those pages of rebuttal that had been summarized.

In retaliation, the Complainant raised a preliminary matter regarding the Respondent's disclosure, specifically that the Summary of Testimonial Evidence provided was not a summary at all but simply a 'laundry list' of evidence. The Complainant asked that the Respondent's submission not be accepted as the summary had not fulfilled the mandatory requirements of M.R.A.C. 8(2)(b)(i) which states

(b) the respondent must, at least 14 days before the hearing date,

- (i) disclose to the complainant and the composite assessment review board the documentary evidence, **a summary of the testimonial evidence**, including a signed witness report for each witness, and any written argument that the respondent intends to present at the hearing **in sufficient detail to allow the complainant to respond to or rebut the evidence at the hearing ...**

The Respondent argued that the summary achieved precisely what the regulations intended; to detail the evidence and the sequence of that evidence within the disclosure.

The Board adjourned briefly to consider the Complainant's request and to examine the Respondent's submission. Upon reviewing the matter, the Board decided to accept the Respondent's summary and hear the evidence, however, cautioned the Respondent that the summary provided was barely acceptable.

Both parties were directed to do a better job with the Summary of Testimonial Evidence and to stop wasting the Board's time.

**Property Description:**

The subject property is the Army & Navy Department Store located on the corner of 33 ST NE and 12 AVE NE within the Franklin Park district of NE Calgary. The subject improvement, located on a 6.70 acre parcel, is a 135,866 square foot, multi-tenant, stand alone retail structure constructed in 1980.

The subject space has three distinct demarcations: 100,000 square feet (on two floors) of Retail/Big Box (Army & Navy) rated as D quality space; 29,866 square feet of Gaming Establishment (Bingo Barn) rated as C- quality space; and 6,000 square feet of Retail (What About Bob's Restaurant) rated as C- quality space.

The subject is assessed using the Income Approach to Value. All of the space is assessed at a rate of \$12 per square foot with the exception of 50,000 square feet of second floor Big Box retail space assessed at \$10 per square foot.

**Issues:**

1. Is the subject assessment too high and, therefore, inequitable to comparable properties? Specifically, are the rates applied to the subject property for the purposes of assessment too high relative to comparable properties in superior locations?

**Complainant's Requested Value:**

\$10,950,000

**Board's Findings and Reasons in Respect of Each Matter or Issue:**

The Complainant argued that the subject assessment does not recognize the subject's functional obsolescence due to its age, inferior location, awkward configuration and the two storey layout of its Big Box retail component. In addition, the Complainant pointed to the 'D' quality rating applied to the subject, the lowest quality rating available. The Complainant further argued that the subject should be considered and assessed for what it is; a unique property of low quality in a poor location, unable to command the rental income of superior properties.

The Complainant requested the assessed rental rates be reduced to \$5 per square foot for the Army & Navy Big Box space, \$11 per square foot for the Bingo Barn Gaming space and \$10 per square foot for What About Bob's CRU space. The remaining Income Approach inputs were accepted as assessed.

In support of the rental rate requests, the Complainant provided the following evidence:

- Bingo Barn – a letter dated October 17, 2005 extending the Bingo Barn lease to August 31, 2016 at \$11.79 per square foot.
- What About Bob's – a letter dated May 19, 2005 renewing the lease for What About Bob's to October 31, 2010 at \$8 per square foot in the fifth year.
- A table entitled Market Rents for Tenants in Similar Class containing twenty-three lease rate comparables ranging from \$3.75 - \$14.27 per square foot.
- Valuation and Assessment Summary Reports for several properties taken from the Complainant's Market Rents table. Of particular note, are the rental rates for Walmart, Zellers, Sears and The Bay which indicate leases for both main and second floor retail space at \$5 per square foot.
- The Complainant also provided a marketing piece for the vacant A&B Sound location in Sunridge indicating asking rents of \$7 per square foot.

In support of the Revised Assessment request, the Complainant provided an alternative Cost Approach to Value that valued the subject property at \$13,083,805. Improvement costs were calculated using Marshall and Swift. The land value was calculated at \$881,000 per acre which the Complainant derived from two Industrial vacant land assessments for properties in reasonable proximity to the subject property.

The Respondent argued that the subject property is located in a dense and fully developed mixed use area, three blocks from 36 ST NE, a major north-south corridor. In addition, the subject enjoys good access from both 33 ST NE and 12 AVE NE.

The Respondent referred to the Complainant's appraisal document that provides the following description of the subject property: "Physically the project is of a very basic design consisting of precast concrete structures which could be adapted to a variety of commercial/warehouse uses". The Complainant's Descriptive Summary document refers to Franklin Park as "a well established light industry/commercial district in NE Calgary, readily accessible via 36<sup>th</sup> ST, MEMORIAL DR and the TRANSCANADA HWY".

The Respondent explained that the subject's Big Box component was assessed at the lowest assessment rate available to the assessor and that the second floor received an additional discount to the prescribed rate to recognize the unique characteristics of that space. The remaining components of the subject space were assessed using typical lease rates.

The Respondent provided lease and equity comparables to support the subject assessment including a D class property in NE Calgary, KK Signs, assessed at \$12 per square foot. The nine lease comparables provided a median lease rate of \$13.62 per square foot.

The Respondent discussed the Army and Navy lease at \$3 per square foot and asked that the Board provide the lease very little weight as the transaction was non arms-length.

The Board accepts that the subject property is located in a well established commercial/retail area with excellent access from major thoroughfares. This conclusion is supported by the Complainant's own evidence which speaks to the subject's proximity to 36 ST NE. Although the subject is not visible from 36 ST NE, there is no evidence before the Board that demonstrates any loss in value to the subject as a result.

The Board also accepts that the subject property is capable of supporting a variety of uses and

is, therefore, less vulnerable to location issues than specific-use properties reliant upon a high visibility location.

The Board finds the subject lease for the Bingo Barn space at \$11.79 per square foot supportive of the assessed rate of \$12 per square foot.

The Board accepts the Respondent's subject assessment rates. The rates are typical and are shown by the Respondent to be fairly derived from the best comparables. The Complainant's comparables (Walmart, The Bay, Zellers, Sears) are not accepted by the Board because the properties are too dissimilar to the subject. The comparables are located in enclosed malls and are frequently the anchor tenant in the development thereby commanding lower lease rates. The Army Navy lease is not accepted as the evidence indicates the lease is non arms-length and, therefore, not typical. The Board notes that all of the subject assessment rates fall within the range of lease rates provided by the Complainant. The A&B Sound marketing piece is not accepted by the Board as the material is without any detail and unsupported by actual leases within that space.

The Board does not accept the Complainant's Cost Approach to Value as the land value is derived from two vacant land assessments of properties that are zoned differently than the subject (Industrial vs. Commercial/Retail) and are, therefore, not representative of the subject land value.

**Board's Decision:**

The assessment is confirmed at \$19,070,000.

DATED AT THE CITY OF CALGARY THIS 12 DAY OF July 2011.



**C. McEwen**  
Presiding Officer

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant's Rebuttal

*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.*