

**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:

TOTEM DEVELOPMENTS LTD. (as represented by ALTUS GROUP LTD.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

C. McEwen, PRESIDING OFFICER

R. Kodak, 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: 034183905

LOCATION ADDRESS: 4215 EDMONTON TR NE

HEARING NUMBER: 64007

ASSESSMENT: \$5,150,000

This complaint was heard on the 24th 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:

- R. Farcas

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

The Respondent challenged material submitted by the Complainant in submission R2, pages 52 – 77, *Better Equity Comparables*, asserting that the material on these pages was new, undisclosed evidence which should not be allowed.

The Complainant stated that although the evidence was new, it should be admitted because it supported the Complainant's argument concerning free standing retail, a concept that was before the Board.

The Board found the material under challenge to be undisclosed material and inadmissible under M.R.A.C. 9(2): *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8(2)(c)*, which requires rebuttal evidence to be disclosed seven days prior to the hearing date.

The new evidence within the rebuttal package was not admitted and the Complainant was directed to refrain from referring to it in any way.

With the preliminary matter decided, the hearing continued.

Property Description:

The subject property is a 23,304 square foot Totem Building Supply store located on a 1.43 acre parcel at the corner of EDMONTON TR and 41 AVE within the Greenview Industrial Park in NE Calgary. The building has excellent exposure to both thoroughfares.

The subject property is assessed using the Income Approach at a rental rate of \$17 per square foot.

Issues:

Is the assessed value of the subject property too high and, therefore, inequitable to comparable properties? Specifically, is the assessed rental rate of \$17 per square foot excessive?

Complainant's Requested Value:

\$3,020,000

Board's Decision in Respect of Each Matter or Issue:**1. MARKET VALUE and EQUITY**

The Complainant provided the subject lease at \$8.69 per square foot to support the request that a \$10 per square foot rate be used to assess the subject property. Both parties, however, agreed that the lease was not an arms-length arrangement and that the land and improvements from which the Totem business is operated from are owned by the founders of Totem who, having sold the business to Rona, remain significant shareholders of Rona Corporation. The Board gives little weight to the subject lease.

The Complainant demonstrated to the Board that the subject property was assessed at a \$10 per square foot rate for several years prior to the 2011 assessment. The Respondent agreed with the historical record but pointed out to the Board that the classification of the subject property has changed this year from Retail to Junior Big Box to align with existing classification criteria. The Board accepts that the current classification is appropriate given that the subject property is a retail location of between 14,001 – 50,000 square feet of non-demarcated space.

The Complainant submitted four equity comparables that were argued to support a lower assessment of the subject property. The lease of the best comparable at 637 GODDARD AVE NE, showing a base lease rate of \$10 per square foot, was provided to the Board as evidence that the subject assessment rate of \$17 per square foot is too high. The Respondent pointed out that the lease for the GODDARD AVE NE property is old, with a commencement date of March 1, 2001. The Respondent also argued that the \$10 lease rate might reflect a location discount given the preferred location and high exposure of the subject property. In addition, this comparable, like the subject, is classified as Junior Big Box and is assessed at \$17 per square foot. The Board weighs the comparable lease accordingly and, given the close proximity of the comparable to the subject, accepts this comparable as actually supportive of the subject assessment.

The Respondent provided thirty lease comparables, eight from NE Calgary, that demonstrate a median lease rate of \$17.05 per square foot. In addition, the Respondent provided fifteen equity comparables that demonstrate the application of the \$17 per square foot rate across a broad range of Junior Big Box-classified locations around Calgary. The Board accepts these Respondent comparables as overwhelming evidence supporting the subject assessment.

Finally, the Complainant's assertion that the leasing materials for the 'A&B Sound' location in Sunridge suggest current market lease rates of \$7 - \$8 per square foot are not given any weight by the Board as the Respondent's e-mail evidence dated June 1, 2011 indicates leasing activity of \$18 per square foot in that space, again, very supportive of the subject assessment.

Board's Decision:

The assessment is confirmed at \$5,150,000.

DATED AT THE CITY OF CALGARY THIS 8 DAY OF July 2011.

C. McEwen

C. McEwen
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant 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.*