

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of the complaints against the property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

**between:**

***Morprop Holdings Alberta Ltd., (as represented by Altus Group Ltd. ), and Hudson's Bay Company (as represented by Wilson Laycraft, Barristers & Solicitors) COMPLAINANT***

**and**

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

**before:**

***L. Wood, PRESIDING OFFICER  
J. O' Hearn, MEMBER  
A. Zindler, MEMBER***

These are complaints 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:

<b>ROLL NUMBER:</b>	<b>200176147</b>
<b>LOCATION ADDRESS:</b>	<b>750 Heritage DR SE</b>
<b>HEARING NUMBERS:</b>	<b>64262 &amp; 64684</b>
<b>ASSESSMENT:</b>	<b>\$17,480,000</b>

These complaints were heard on June 16, 2011, September 19, 2011 and November 4, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- *Mr. B. Dell* *Lawyer, Wilson Laycraft, Barristers & Solicitors*
- *Mr. G. Chmelski* *Tax Manager, Hudson's Bay Company*
- *Mr. A. Izard* *Agent, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *Ms. B. Thompson* *Assessor, City of Calgary*
- *Mr. K. Gardiner* *Assessor, City of Calgary*
- *Mr. I. McDermott* *Assessor, City of Calgary*

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

The Board notes there are two complaints associated with this roll number: Altus Group Ltd., on behalf of the property owner, the shopping centre, and Wilson Laycraft, Barristers & Solicitors, on behalf of the tenant, the Hudson's Bay Company/Home Outfitter. It was the intent of the parties and the Board to have multiple complaints associated with one roll number heard together (**CARB 0800-2011-P**). Additional time was required to hear these complaints throughout the course of the hearing season.

It is noted that the Complainant who filed a complaint on behalf of the tenant indicated that he had filed complaints on four of the six Home Outfitter stores located in Calgary. The Complainant submitted that the evidence and argument submitted on file #64690 (Home Outfitter located at 3915 51 ST SW) be cross referenced throughout the four complaints. The Respondent's evidence and argument would be cross referenced to files #64686 and #64688. A separate assessment package would be submitted in regards to file #64684.

At the commencement of the shopping centre hearing on November 4, 2011, the Complainant indicated that he was withdrawing his issue in regards to the capitalization rate.

During the course of the hearing, the Respondent raised a preliminary matter. He indicated that he did not wish to speak to his disclosure and argued that since it was not yet marked as an exhibit, it was not evidence. The Complainant argued that he had filed a rebuttal and wanted both the City's submission as well as his rebuttal document entered into evidence.

The Board ruled that the assessment brief was filed in accordance to section 8(2)(b) of *Matters Relating to Assessment Complaints Regulation* AR 309/2009 ("MRAC"). That document becomes part of the record pursuant to section 14 of MRAC. The Board advised the Respondent that it was his discretion whether or not he chose to speak to that document in this proceeding. However the Complainant would be provided with an opportunity to cross examine the Respondent on that document. In addition, the Complainant will be allowed to present his rebuttal in this matter.

**Property Description:**

The subject property is a (power) shopping centre, commonly known as the Heritage Towne Centre, located in the community of East Fairview Industrial. It is comprised of four buildings that range between 4,026 sq. ft. to 34,284 sq. ft. (total area of 50,143 sq. ft.) situated on 8.72 acres. This includes the Home Outfitter store of 34,284 sq. ft. The buildings were constructed in 2002. The land use designation is Commercial – Regional 3.

**Issues:****Tenant's Issue by Wilson Laycraft:**

1. The assessed rental rate for the Home Outfitter should be reduced from \$21.00 psf to \$15.00 psf.

**Property Owner's Issues by Altus Group Ltd:**

1. The assessed rental rate for the Home Outfitter should be reduced from \$21.00 psf to \$17.00 psf.
2. The assessed rental rate applied to the CRU space (1,001 – 2,500, sq. ft.) should be reduced from \$42.00 psf to \$32.50 psf.
3. The assessed rental rate applied to the CRU space (2,501 – 6,000 sq. ft.) should be reduced from \$33.00 psf to \$25.00 psf.
4. The assessed rental rate applied to the restaurant space should be reduced from \$36.00 psf to \$31.50 psf.

**Complainant's Requested Values:** \$14,580,000 (Wilson Laycraft)  
\$14,120,000 (Altus Group Ltd.)

**Board's Decision in Respect of Each Matter or Issue:****Tenant's Issue by Wilson Laycraft:**

1. The assessed rental rate for the Home Outfitter should be reduced from \$21.00 psf to \$15.00 psf.

The Complainant submitted the current lease rates for the six Home Outfitter stores located in Calgary that were signed in May 2001 – August 2009 (Exhibit C1 Tab 3). The leased areas are 32,356 – 40,731 sq. ft. and the rates range between \$14.75 - \$17.00 psf.

The Complainant's witness, Mr. Greg Chmelski, testified that rents signed by national retailers tend to be consistent across the country and therefore those rents are relevant in determining

the market rent in any location. He indicated that rents for anchor tenants have been consistent for the past 4 – 5 years with no upward trends. He stated the typical areas for Home Outfitter store range between 30,000 – 40,000 sq. ft. and the typical rents are \$14.00 - \$16.00 psf. He indicated that typical tenant allowances are a minimum of \$20.00 psf to get the store in functioning order (Exhibit C1 page 2). He submitted that this would translate into the net rental rate by reducing all of the rates by \$1.33 - \$1.50 psf over a 15 year initial term. The actual rental rate would be \$14.00 psf. Mr. Chmelski also drew the Board's attention to several articles on retail in the submission (Exhibit C1 Tab 13).

The Complainant submitted that the rental rates for property assessments should equal the business assessments, which was the Respondent's practice in 2010. Accordingly the business assessments for the Home Outfitter as determined by the Local Assessment Review Board in 2010 should be the same as there is no evidence submitted by the Respondent to warrant an increase (Exhibit C1 Tab 9).

The Board noted the Respondent did not provide a separate submission in regards to the tenant's complaint. Its submission was in response to the property owner's complaint as set out below which included the assessed rental rate applied to the Home Outfitter space. Therefore the Board carried forward its reasons based on the prior complaints filed by the tenant on behalf of the Home Outfitter stores as the Complainant's evidence and argument was identical to all four complaints.

The Board finds there was little evidence presented by the Complainant to support a \$15.00 psf assessed rental rate. The Board was not persuaded by the Complainant's argument that the rental rates for business assessments and property assessments must be the same. The fact that the municipality had applied the same assessed rental rate to both the business and property assessments in 2010 does not convince the Board that methodology should still be employed given the recent court decision *Calgary (City) v. Canadian Natural Resources Limited* 2010 ABQB 417.

In that decision, the Court found the City of Calgary was incorrect to have defined the net annual rental value ("NARV") in its Business Tax Bylaw *as the typical market annual rental value of the premises, exclusive of operating costs, but inclusive of costs of leasehold improvements* when determining the annual business assessments. The NARV reflects a value attributable to the landlord and typically tenant improvements do not add value to the owner. As Justice McIntyre stated "*the failure of the City to consider the effect of leasehold improvements on the "net annual rental value" has the effect of incorrectly and inequitably inflating business tax assessments*" (para. 106, page 26).

#### **Property Owner's Issues by Altus Group Ltd:**

1. The assessed rental rate for the Home Outfitter should be reduced from \$21.00 psf to \$17.00 psf.

The Complainant submitted a leasing analysis of Junior Big Box stores of leases which commenced in 1986 - 2009 (Exhibit C1 page 66). The Complainant stratified those leases by areas of 20,000 - 50,000 sq. ft. The rental rates are \$9.10 - \$24.00 psf for a median of \$15.00 psf). The Complainant highlighted 2009 leasing activity and indicated that the rates are \$14.25 - \$24.00 psf, including the other Home Outfitter locations, which were assessed at \$17.00 psf. The Complainant also drew the Board's attention to the Tenant Rent Roll for the subject

property indicating rental rates lower than the current assessed rates (Exhibit C1 page 17). The Complainant submitted three equity comparables in support of the \$17.00 psf rate (Exhibit C1 page 69).

The Respondent submitted there are no recent leases, however, that does not mean it cannot derive an assessed value. Leasing activity, location and tenancy are all taken into consideration. Based on a median of \$20.50 psf of leasing activity throughout the City and its location next to two of the busiest highways, the \$21.00 psf assessed rate for the subject property is supported. The Respondent submitted three recent Board decisions CARB 2224-2011-P, CARB 2228-2011-P and CARB 2229-2011-P in support of his position that all power centres are not equal. These CARB decisions relate to the Deerfoot Meadows Power Centre, which is considered to be a superior property, and the Board confirmed the \$21.00 assessed rate as well as the CRU spaces. The Respondent argued that if there is a change to any of the assessed rates for the subject property, then this would create an inequity with Deerfoot Meadows.

The Board noted the comparables presented by the Complainant in regards to the recent leasing activity through the 2009 leases. However the Board placed little weight on these leases as they are in inferior locations than the subject property. The Board also placed little weight on the Tenant Rent Roll as submitted by the Complainant as the leases are quite dated (2002 and 2003).

The Board agrees with the findings set out in CARB 2224-2011-P that it is reasonable that power centres in superior locations can generate higher rental rates and therefore would exhibit higher market values than similar properties in inferior locations.

This Board also noted in CARB 2229-2011-P that the panel has already made a finding that the power centre known as the Deerfoot Meadows is in a superior location and confirmed the \$21.00 psf assessed rate applied to its Junior Big Box store. The subject property, in this instance, is located within close proximity to Deerfoot Meadows. In fact, the Complainant has referred to the subject property as Deerfoot Meadows in his Home Outfitter's lease comparable. There was no evidence submitted by the Complainant to suggest the subject property is in an inferior location in relation to Deerfoot Meadows. Equity between two power centres located within close proximity to each other must be maintained and the Board therefore confirms the \$21.00 psf assessed rate.

2. The assessed rental rate applied to the CRU space (1,001 – 2,500, sq. ft.) should be reduced from \$42.00 psf to \$32.50 psf.

The Complainant submitted 32 lease comparables of CRU space that is 1,001 – 2,500 sq. ft. from various power centre locations (Exhibit C1 page 83). The leases commenced in 2009 and 2010 with rates of \$17.00 psf - \$45.00 psf (median of \$32.50 psf).

The Board carries forward its findings for Issue #1. The Board confirms the \$42.00 psf assessed rental rate as that was the same assessed rate applied to similar space in Deerfoot Meadows. The Board also placed less weight on the leasing activity put forward by the Complainant for the same reasons as identified above for Issue #1.

3. The assessed rental rate applied to the CRU space (2,501 – 6,000 sq. ft.) should be reduced from \$33.00 psf to \$25.00 psf.

The Complainant submitted 13 lease comparables of CRU space that is 2,501 – 6,000 sq. ft. from various power centre locations (Exhibit C1 page 83). The leases commenced in 2009 and 2010 with rates of \$17.00 psf - \$38.00 psf (average \$25.25 psf).

The Board carries forward its findings for Issue #1. The Board confirms the \$33.00 psf assessed rental rate as that was the same assessed rate applied to similar space in Deerfoot Meadows. The Board also placed less weight on the leasing activity put forward by the Complainant for the same reasons as identified above for Issue #1.

4. The assessed rental rate applied to the restaurant space should be reduced from \$36.00 psf to \$31.50 psf.

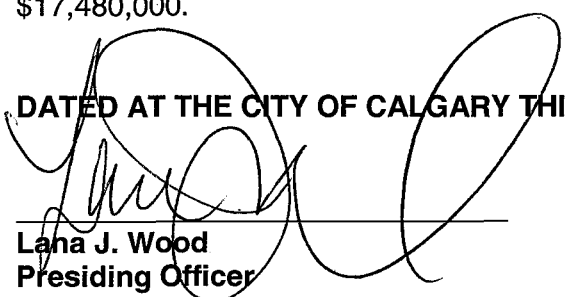
The Complainant submitted 18 lease comparables of restaurant space that is between 4,140 sq. ft. – 7,770 sq. ft. from various locations throughout the City (Exhibit C1 page 79). The leases commenced in 2008 - 2010 with rates of \$23.00 psf - \$43.00 psf (median of \$31.50 psf). The Complainant requested the median of \$31.50 psf apply to the subject area of 6,111 sq. ft.

The Board carries forward its findings for Issue #1 and confirms the assessed rental rate of \$36.00 psf.

**Board's Decision:**

The decision of the Board is to confirm the 2011 assessment for the subject property at \$17,480,000.

DATED AT THE CITY OF CALGARY THIS 20<sup>th</sup> DAY OF DECEMBER 2011.



Lana J. Wood  
Presiding Officer

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:****EXHIBIT NO.****ITEM**


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1. C1	Complainant's Submission (file #64690)
2. C1	Complainant's Submission (file #64262)
3. C2	Complainant's Rebuttal (file #64262)
4. R1	Respondent's Submission (file #64262)

*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.*

**FOR ADMINISTRATIVE USE**

SUBJECT	PROPERTY TYPE	PROPERTY SUB - TYPE	ISSUE	SUB - ISSUE
CARB	Retail	Power Centre	Income Approach	Net Market Rent/ Lease Rates