

**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:**

***First Capital (Royal Oak) Corporation (as represented by Altus Group Ltd. ), and  
Hudson's Bay Company (as represented by Wilson Laycraft, Barristers & Solicitors) and  
Wal-Mart Canada Corporation (as represented by AEC International Inc. and 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>200121077</b>
<b>LOCATION ADDRESS:</b>	<b>8888 COUNTRY HILLS BV NW</b>
<b>HEARING NUMBERS:</b>	<b>64076, 64686 &amp; 63689</b>
<b>ASSESSMENT:</b>	<b>\$71,490,000</b>

These complaints were heard on June 16, 2011, July 18, 2011, September 19, 2011, September 20, 2011 and November 3, 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.*
- *Mr. D. Hamilton* *Agent, Altus Group Ltd.*
- *Mr. R. Brazzell* *Senior Manager, Altus Group Ltd.*
- *Ms. B. Soulier* *Agent, AEC International Inc.*

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*
- *Mr. R. Ford* *Assessor, City of Calgary*
- *Ms. K. Hess* *Senior Manager, City of Calgary*

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

The Board notes there are three complaints associated with this roll number: Altus Group Ltd., on behalf of the property owner, the shopping centre; Wilson Laycraft, Barristers & Solicitors, on behalf of the tenant, the Hudson's Bay Company/Home Outfitter; and AEC International Inc. and Wilson Laycraft, Barristers & Solicitors on behalf of the tenant, Wal-Mart. It was the intent of the parties and the Board to have multiple complaints associated with one roll number heard together as outlined in **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, the Hudson's Bay Company, indicated that he had filed complaints on four of the six Home Outfitter stores located in Calgary. The Complainant requested 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**.

The Complainant indicated at the hearing on June 16, 2011 that, although his written submission would apply to file **#64686**, Altus Group Ltd. would be addressing the rental rate in their submission as well. The Board notes that Altus Group Ltd, in file **#63689**, did not identify the rental rate as an issue or present any evidence in support of that issue at the November 3, 2011 hearing. Therefore the Board carries forward the parties' submissions in regards to the June 16, 2011 and September 19, 2011 hearings as well as the Board's decision and reasons as rendered for file **#64690 (CARB 0799-2011-P)**.

It is also noted Ms. Soulier, who filed a complaint on behalf of the tenant, Wal-Mart, had filed complaints on two other Wal-Marts located in Calgary (files **#64068** & **#64073**). Those two

complaints were heard on July 18, 2011 and decided by the Board in **CARB 1536-2011-P**. The parties appearing on the third Wal-Mart complaint, file #64076, on September 20, 2011, agreed that they were cross referencing evidence and arguments that were heard in those cases to the present case. The Board carries forward its decisions and reasons on that evidence as set out in **CARB 1536-2011-P**.

The Complainant requested an opportunity to submit additional evidence unique to the subject property that was not identified in the earlier proceedings. The Board allowed both parties to submit any evidence and argument (as disclosed) pertaining to this specific Wal-Mart property that was not raised at that prior hearing. The Board will only comment on that evidence in this decision with consideration of **CARB 1536-2011-P**. The Complainant also indicated that she would only be addressing a change to the assessed rental rate for the Wal-Mart property (from \$10.00 psf to \$8.00 psf), and she deferred the issue pertaining to the change in capitalization rate for Altus Group Ltd. to address in its submission.

On November 3, 2011, Mr. Izard (acting on behalf of the property owner) brought forward two issues: an increase to the vacancy rate from 7.5% to 15% (abnormal vacancy) and an increase to the capitalization rate from 7.25% to 7.75%. The evidence pertaining to the capitalization rate analysis was carried forward from file #64170, (3915 51 ST SW). The Board rendered its decision verbally to the parties in regards to the Complainant's capitalization rate analysis at the previous day's hearing on November 2, 2011, as presented by Mr. Hamilton, specifically the Complainant did not meet his onus. The Board's decision and reasons are set out in **CARB 0799-2011-P**.

However, Mr. Izard insisted on submitting the evidence to the Board again despite repeated warnings from the Board not to do so in light of its previous day's ruling. The Board also cautioned the Complainant that if he chose to submit the same capitalization rate analysis, costs could be warranted. The Complainant disregarded the Board's directions and proceeded to present the identical capitalization rate analysis.

At the conclusion of Mr. Izard's submission, the Respondent requested a ruling on onus based on the Complainant's documentary evidence being identical to that evidence the Board had based its previous ruling (Exhibit C1 pages 172 - 201). Agents for the Complainant argued that the decisions brought forward were evidence. They also acknowledged the Board was clear - it was argument.

Mr. Brazzell, on behalf of the Complainant, stated Mr. Izard did his best to indicate what was new and different in this appeal. He argued whether or not a party has met onus is a very low threshold test. It is not a situation where the Board looks to the weight of the evidence, but asks itself, is there enough evidence to merit the appeal? If the evidence is correct, has the property been over-assessed?

The Board rendered its decision in regards to the issue of onus to the parties as follows:

*The Board finds the Complainant's request to alter the assessment based on a concept of abnormal vacancy is unfounded. The evidence to support their contention was contradictory and contained numerous discrepancies in terms of this issue.*

*The Board finds the Complainant's evidence in regards to the capitalization rate analysis was identical to that found in file #64170. Accordingly, the Board's decision is the same as*

that rendered on file #64170.

*The Board finds the Complainant's conduct in today's hearing unacceptable as they disregarded the Board's direction and ruling in regards to the capitalization rate analysis. They insisted on arguing the same matter again with the same evidence but merely with a different presenter. The Board notes Mr. Hamilton, who presented the capitalization rate analysis for #64170, was present throughout today's proceeding while a different agent presented the same evidence needlessly.*

*The Board finds, given the unreasonable chance of success, costs are warranted in this instance in the amount of \$2,000.00 pursuant to Schedule 3 of Matters Relating to Assessment Complaints Regulation AR 310/2009 ("MRAC") under Part 2 Merit Hearing, "For first ½ day of hearing or portion thereof". These costs are to be forwarded to the City of Calgary's Assessment Branch on or before Thursday, November 10, 2011.*

**Property Description:**

The subject property is commonly known as the Royal Oak Centre, a community shopping centre. It has two properties associated with this single tax roll account under dispute, specifically the Wal-Mart (132,228 sq. ft.) and the Home Outfitter store (32,356 sq. ft.).

**Issues:**

1. The assessed rental rate for the Home Outfitter should be reduced from \$17.00 psf to \$15.00 psf.
2. The assessed rental rate for the Wal-Mart should be reduced from \$10.00 psf to \$8.00 psf.

**Complainant's Requested Value:** \$15.00 psf (Wilson Laycraft, Barristers & Solicitors)  
\$8.00 psf (AEC International Inc.)

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

1. The assessed rental rate for the Home Outfitter should be reduced from \$17.00 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 Respondent submitted the \$17.00 psf assessed rate was based on an analysis of recent leases for Junior Big Box space that commenced in January 2008 – October 2010. The Respondent referred to 30 lease comparables of leased areas between 14,836 – 37,809 sq. ft. with lease rates of \$12.50 - \$30.91 psf (median of \$17.05 psf) (Exhibit R1 page 44).

The Respondent also submitted 64 equity comparables to show that the \$17.00 psf rate was applied to leased areas of 14,836 – 46,043 sq. ft. (Exhibit R1 pages 45 & 46).

The Respondent argued, given the recent "McIntyre" decision, the assessed rental rates for business and property assessments are not the same for 2011.

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 as referred to by both parties.

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).

2. The assessed rental rate for the Wal-Mart should be reduced from \$10.00 psf to \$8.00 psf.

The Complainant, Ms. Soulier, submitted the subject property is the only Wal-Mart with a lease in place of \$10.00 psf. The other two Wal-Marts are owner occupied. She argued the subject's lease is the only lease the Respondent had relied upon to derive the \$10.00 psf rate for the entire market of big box stores 100,001+ sq. ft. However, in doing so, the Respondent failed to take into consideration the Common Area Maintenance ("CAM") charge of \$1.21 psf. The Complainant argued the Wal-Mart's lease rate of \$10.00 psf must be reduced to acknowledge the CAM limit to determine effective net rent (Exhibit C4 page 15 - 17).

The Complainant also argued that business assessments take into account tenant inducements and she referred to the lease extract for the subject property (Exhibit C4 page 27). She referred to the \$5,719,000 in tenant allowance from the landlord to the tenant to construct the building, and then lease the premises. That cash allowance is reflected in the subject's lease which the Complainant indicated was provided to the Respondent in its entirety. This would reduce the \$10.00 psf rental rate to \$7.85 psf.

The Respondent submitted the Assessment Request for Information ("ARFI") for the subject property (Exhibit R1 pages 55 – 65). She noted it was completed by Mr. Chmelski, who was the Complainant's witness on the Home Outfitter complaints. It reflects a 2003 lease for Wal-Mart area at a rate of \$10.00 psf. She drew the Board's attention to the Tenant Rent Roll which indicates the CAM charge of \$1.21 psf. She argued the \$10.00 psf is the base rate.

The Respondent argued that the tenant inducement, to develop and construct the building and to lease the premises, those monies would not be considered an expense but an investment in the building.

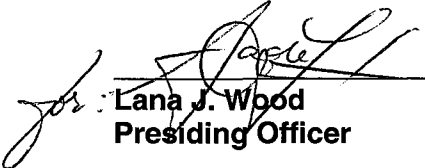
*The Board requires the full lease and other pertinent documents associated with the lease, specifically in regards to the Complainant's issues in order to give proper consideration to these requests.*

*In light of the decisions and reasons as set out in **CARB 1536-2011-P**, along with the evidence presented in this hearing, the Board confirms the assessment.*

**Board's Decision:**

The decision of the Board is to confirm the 2011 assessment for the subject property at \$71,490,000.

DATED AT THE CITY OF CALGARY THIS 21<sup>st</sup> DAY OF DECEMBER 2011.

  
Lana J. Wood  
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.*

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

<b>EXHIBIT NO.</b>	<b>ITEM</b>
1. C1	Complainant's Submission (#63689)
2. C1	Complainant's Submission (#64170)
3. C2	Complainant's Rebuttal (#64170)
4. R1	Respondent's Submission (#64170)
5. C1	Complainant's Submission (#64690)
6. R1	Respondent's Submission (#64690)
7. C1	Complainant's Submission Part 1 (#64068 & #64073)
8. C2	Complainant's Submission Part 2 (#64068 & #64073)
9. C3	Complainant's Legal Analysis Part 3 (#64068 & #64073)
10. C4	Complainant's Rebuttal Part 4 (#64068 & #64073)
11. R1	Respondent's Assessment Brief (#64068 & #64073)
12. C2	Complainant's Submission (#64076)
13. C4	Complainant's Submission (#64076)
14. R1	Respondent's Submission (#64076)

**FOR ADMINISTRATIVE USE**

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