

**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:**

***Northland Village Mall Holdings Inc. (as represented by Altus Group Ltd.),  
COMPLAINANT***

**and**

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

**before:**

***J. Schmidt, PRESIDING OFFICER  
I. Fraser, MEMBER  
J. Rankin, 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:

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<b>ROLL NUMBER:</b>	<b>019125293</b>
<b>LEGAL DESCRIPTION:</b>	<b>Plan 7610432, Block 1, Lot 6</b>
<b>LOCATION ADDRESS:</b>	<b>5111 Northland Drive NW</b>
<b>HEARING NUMBER:</b>	<b>63488</b>
<b>ASSESSMENT:</b>	<b>\$117,860,000</b>

This complaint was heard on the 27<sup>th</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 8.

Appeared on behalf of the Complainant:

- *J. Virtue, LLP* *Solicitor*
- *D. Hamilton* *Agent, Altus Group Ltd.*
- *M. Kehoe* *Witness*

Appeared on behalf of the Respondent:

- *P. Frank* *Solicitor, The City of Calgary*
- *D. Zhao* *Assessor, The City of Calgary*

**Preliminary Matter:**

1. On request, the Board accepted AEC Tax Consultants to attend the hearing with intervener status. AEC advised the members of the Board that no evidence or argument will be entered, rather attendance was requested only to hear the case as it came forward.
2. The Respondent objected to certain material being entered as rebuttal which may include new evidence. The Board ruled that the rebuttal document did not extend to new evidence and was therefore entered in whole as an exhibit.

**Property Description and Background Information:**

The subject property is known as the Northland Village Mall and was originally developed in 1971 as a Regional Shopping Centre Mall with an interior two corridor common area design. During the mid 1980s the mall was redeveloped to accommodate new anchor tenants such as Winners, Future Shop, Home Outfitters, etc. in place of the original anchor tenant like Eaton's and Wal-Mart.

To determine the estimate of market value for purposes of the subject property assessment, the income approach to value was applied.

The complaint came forward on grounds the assessed value is overstated based on three issues.

In particular, the matter of mobile mini retail units assessment, vacancy rate and capital expenditures for tenant improvements and lessee branding costs are addressed in this case.

**Complainant's Requested Value:** \$96,730,000

**Issues:**

1. Are the things identified as Mini Retail Units (MRU's) liable to property assessment?
2. Is the stabilized vacancy rate, as applied at 1% an appropriate rate in calculating the subject property assessed value?
3. Should costs associated with redevelopment of leased space and lessee identity branding be removed from the estimate of market value for property assessment purposes?

In deciding these matters the particular legislative requirement governing property assessments are considered.

***Municipal Government Act***

*1(1) In this Act,*

*(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;*

*284(1) In this Part and Parts 10, 11 and 12,*

*(j) "improvement" means*

*(i) a structure,*

*(ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,*

*(r) "property" means*

*(iii) a parcel of land and the improvements to it;*

*(u) "structure" means a building or other thing erected or placed in, on, over or under land, whether or not it is so affixed to the land as to become transferred without special mention by a transfer or sale of the land; ... .*

*289(1) Assessments for all property in a municipality, other than linear property, must be prepared by the assessor appointed by the municipality.*

*(2) Each assessment must reflect*

*(b) the valuation and other standards set out in the regulations for that property.*

***Matters Relating to Assessment and Taxation Regulation AR 220/2004***

*2 An assessment of property based on market value*

*(a) must be prepared using mass appraisal,*

*(b) must be an estimate of the value of the fee simple estate in the property, and*

*(c) must reflect typical market conditions for properties similar to that property.*

**Complainant's Position:**

Briefly stated, in direct testimony the Complainant submitted, that while the MRUs can generate revenue to the property owner based on a license agreement, that revenue is not attributable to the real estate (property). It was argued that the MRUs are mobile things which would not transfer with the property on a sale transaction and therefore are not assessable.

Regarding the matter of vacancy, it was the Complainant's position that the actual weighted most recent two year vacancy rate for this property was 3.26% for leased space less than 20,000 square feet. There was no issue with the 1% vacancy rate being applied to the larger anchor tenants, however, it was requested that a reasonable typical vacancy rate for the non anchor retail space should be 3%.

With respect to the capital cost deduction issue, it was argued, in part, that all of the leasable space was not capable of achieving the 2010 assessment year typical market rent. For the subject property to achieve the assessment year market rent, as a whole, there would be a requirement to undertake upgrading aging tenant improvements and lessee branding requirements which include demolition and re-construction costs.

These costs amount to some \$15,693,000, in this case, which should be removed from the assessor's final indication of market value.

In support of this submission Exhibits C1 (196 pages) and C2 (121 pages) were entered into the hearing record.

In final summation it was requested the assessment be reduced to \$96,730,000.

#### **Respondent's Position:**

With respect to the mini retail units (MRUs) the Respondent submitted that even though the property owner, in this case, did not report income for the units at issue on the annual information request form, the agreement to operate these retail units demonstrates that income is being generated. Since these units generate income and occupy space as a licensed area of the mall common area, that space is assessable as part of the property value.

In the matter of the stabilized vacancy rate as applied, the 1% rate was established from the subject property and like properties owners' information request forms as submitted. The returns, as received, show an overall vacancy rate of 1.08% for the subject property. It was argued the Complainant's data on this matter is misleading due to a different method, than used by the Respondent, for determining the typical vacancy rate. For purposes of the subject assessment, vacant space was compared to the total property leasable area in determining the vacancy factor, whereas the Complainant compared the vacancy space to only the total leasable area for tenants under 20,000 square feet.

In addition some of the Complainant's vacant space data was in fact occupied under a sub lease agreement which was not factored into the proposed vacancy calculation. The 1% stabilized vacancy rate, as applied, has been applied to all like properties and as such the Complainant's request should not be accepted.

The matter brought forward by the Complainant respecting a deduction for capital costs related to tenant improvement and branding is not supported with actual cost information. Nor is there any evidence or cost information submitted to show leased space undergoes a redevelopment process every two years as suggested by the Complainant. The matter of applying a value reduction amount, as proposed, does not fall within the capitalized net income method of estimating market value and should not be accepted as a reliable factor in determining value for property assessment purposes.

In support of this submission, the Respondent entered Exhibit R1 (217 pages), R2 (3 pages) and R3 (2 pages).

In closing it was requested that the assessment at \$117,860,000 should be confirmed.

Upon having given careful consideration to the evidence, argument and facts which came forward in this case, the finding, reasons for the finding and decision is given as follows.

**Findings:**

1. The things identified as Mini Retail Units are liable to property assessment.
2. The stabilized vacancy as applied at 1% is an appropriate rate in calculating the subject assessed value.
3. Redevelopment and lessee identity branding costs should not be removed from the estimate of market value for property assessment purposes.

**Reasons:****MRUs**

In this case it is evident (Exhibit C1, P. 63) that the Licensor, Northland Village Mall, "has agreed to give the Licensee a non-exclusive, revocable license to enter upon and use the location (the "Licensed Area") containing an approximate area of \_\_\_\_\_ (a)" for a license fee. As a result, the Board accepts the Respondent's position that income is being generated for mall space which is assessable as property.

**Vacancy**

The evidence submitted by the Complainant has questionable data calculations and therefore the Board will accept the Respondent's position on this matter. This is particularly so when consideration is given to the fact the stabilized rate was established based on property owners reported vacancies.

**Redevelopment and Branding Costs**

While the Complainant's arguments may have merit respecting redevelopment costs to upgrade leased space to assessment year standards, the actual cost of such upgrades are lacking and therefore the Board cannot accept the Complainant's position on this matter. It is the Board's view that lessee identity branding costs are business costs not subject to assessment. There was no evidence to show that branding costs are in fact part of a leasehold interest and therefore there is no need to consider a property reduction for a business value item such as a business identity branding cost.

**Board's Decision:**

With the forgoing in mind, the assessment is confirmed at \$117,860,000.

DATED AT THE CITY OF CALGARY THIS 29 DAY OF July 2011.

  
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**Jack Schmidt**  
**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.*