

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

- Revised -

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:

Quinco Financial Inc. (as represented by the Altus Group), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***P Petry, PRESIDING OFFICER
D Julien, 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:

ROLL NUMBER:	049015209
LOCATION ADDRESS:	3451 Sunridge Way N.E.
HEARING NUMBER:	64630
ASSESSMENT:	\$18,720,000

This complaint was heard on the 20th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- Mr. K Fong

Appeared on behalf of the Respondent:

- Mr. S Turner

Property Description:

The subject property, which is classified as a Junior Big Box Store, is located at 3451 Sunridge Way N.E. This property has 125,732 sq. ft. of rentable area and is occupied by The Brick, United Furniture Warehouse and Habitat for Humanity. Given the size of the building on the property, the site coverage is approximately 48%. The building backs on to 16th Avenue N.E leaving no room for loading docks at the rear, therefore the loading docks are at the front centre of the building. The assessment for this property has been developed using the capitalized net income approach which was recently amended to correct an error relating to space allocation between the tenants. The space (28,000 sq. ft) occupied by Habitat for Humanity is exempt from taxation. The current assessment was amended to \$24,910,000 less the exempt space valued at \$6,190,000 leaving the taxable portion under complaint at \$18,720,000 or \$148.88 per sq. ft.

Issues:

1. Is the sale of the subject property on January 4, 2010 a reliable indicator of the property's market value as of July 1, 2010?
2. Is the subject property typical of other Junior Big Box Stores?
3. What are the correct and equitable rental rates for the subject components:
 - The Brick
 - United Furniture Warehouse
 - Habitat for Humanity

Other matters and issues were raised in the complaint filed with the Assessment Review Board (ARB) on March 17, 2011. The only issues however, that the parties sought to have the Composite Assessment Review Board (CARB) address in the hearing on July 20, 2011 are those referred to above, therefore the CARB has not addressed any of the other matters or issues initially raised by the Complainant.

Complainant's Requested Value:

Based on the sale of the subject property on January 4, 2010 for the sum of \$10,250,000 the Complainant requests that the assessment be set at that amount.

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

1. The CARB finds that the sale of the subject property is not a reliable indicator of the property's market value as of July 1, 2010.
2. The subject property is found not to be typical of other Junior Big Box comparables.
3. The rental rates applied in reaching the current assessment of the subject have not being changed by this decision of the CARB.

Summary of the Party's Positions**Sale of the subject**

The Complainant argued that the sale of the subject is the best indicator of market value and therefore should be adopted by the CARB in setting the assessment of the 2011 tax year. In support of this conclusion the Complainant relied on the following documentation:

1. Third party reports on the sale showing it to be a market sale at \$10,250,000 on January 4, 2010.
2. Land titles documents confirming the sale and including a Affidavit of transfer showing that both parties to the transaction agreed that the price of \$10,250,000 means the dollar amount the land and improvements might be expected to realize on the open market.
3. A decision of the 2010 CARB where in the Board relied on this sale, even though post-facto to the 2010 valuation date of July 1, 2009, as the strongest evidence of the property's market value and reduced the assessment to \$10,250,000.
4. The Complainant had also prepared a capitalized net income pro-forma based on current rental rates for the building which produced total a value of \$12,295,000. The Complainant nevertheless, requested that the CARB place greatest weight on the sale value of \$10,250,000.

The Complainant acknowledged that Mr. John Volken was chief executive officer of United Furniture Warehouse when its business interests were sold to The Brick in March 2004 and that the vendor respecting the sale of the subject property is The John Volken Foundation. It was argued that these facts, however, do not change the nature of the sale to a non-arms length transaction.

The Respondent argued that they did not have the information last year respecting the relationship between the buyer and seller of the subject property in January 2010. Therefore, the CARB should not place any weight on the previous CARB decision for 2010. The Respondent presented various reports and documents which indicate that the same representatives of The Brick (the purchasers) and United Furniture Warehouse (the vendors) who were involved the sale of the business interest of United Furniture Warehouse are also the same parties involved in the real estate transaction in January 2010. Further it was argued that the subject property was not for sale on the open market but rather was a private transaction between two related business partners.

On this basis the Respondent urged the CARB not to place weight on the sale of the subject.

The validity of the sale should also be viewed as suspect given the wide gap between the assessed value based on typical inputs and the sale price.

Findings and Reasons for the Board's Decision:

Sale of the Subject Property

Market value is defined in section 1(1)(n) of the Municipal Government Act (MGA) as follows:

““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;”

From the evidence and testimony of the Complainant, the sale of the subject by the John Volken Foundation to 1505906 Alberta Ltd., which is owned or affiliated with The Brick/United Furniture Group, was not exposed to the market but rather was a sale between the tenants (the Brick and United Furniture Warehouse) and the owner, John Volken Foundation. Because this property was not exposed to the “open market” the CARB is not convinced that the sale price of \$10,250.000 is a reliable indicator of the property's market value.

In addition, from the evidence of both parties it is shown that John Volken was the chief executive of United Furniture Warehouse at the time the business interests in United Furniture Warehouse were transferred to The Brick in March 2004. After that transaction it appears that the Brick and United Furniture Warehouse have had a continuing relationship respecting the use of real estate still under the ownership and control of the John Volken Foundation. The CARB did not have the sales agreement for the 2004 business interest transfer at our disposal for review and therefore we are unable to ascertain whether the parties to that transaction also agreed to optional future disposition of the United Furniture real estate. The Board, however, is concerned that it did not have all of the information required to determine the extent of the business relationship between the vendor and purchaser in this case.

The Complainant was aware that a challenge respecting the arms length nature of the subject sale would be forthcoming and yet based on the evidence brought forward in this regard the CARB was not convinced that the sale was an arms length sale. The fact that the property was not exposed to the open market, which is a significant feature of the definition of market value provided by the Act, is an equal or more important consideration for the Board. The conclusion reached by the CARB is therefore not to place weight on the January 4, 2010 sale of the subject property.

Summary of the Party's Positions

Typical Junior Big Box Store

The Complainant argued that the subject property is not a typical Junior Big Box Store and is more akin to a retail/warehouse property. First, the property has site coverage of 48% allowing for less than half the parking spaces typically required for a big box retail property. The building is situated to take maximum advantage of the lot configuration but this results in there being no room for loading docks in the rear. The loading docks are therefore in the front of the building

where they disrupt the retail access and further reduce room for parking. The Complainant submitted numerous photographs of other Junior Big Box stores to show the contrast between the subject and other properties classed and assessed in this category.

The Respondent argued that the subject is well located just behind the Super Store and has good exposure from both 16 Avenue N.E. and Sunridge Way. The Respondent suggested that the Complainant has not proven any detriment related to the lack of parking.

Findings and Reasons for the Board's Decision:

Typical Junior Big Box Store

The CARB considered the information brought forward by the Complainant respecting the comparability of the subject with other junior Big Box Stores. Most of the examples used showed an obvious difference with respect to parking and retail access. The subject parking area was stated as being less than one half of what is typically required and this was not refuted by the Respondent. The need to place the loading dock at the front of the building also is atypical and would be detrimental if not hazardous to retail access. For these reasons the CARB concludes that the subject is not a typical Junior Big Box retail store and has features which appear to justify some adjustment to the standard or typical values used to develop the assessment.

Summary of the Party's Positions

Rental Rates Applicable to the Subject

The Complainant proposed a new pro-forma basing a proposed rate of \$8 for The Brick and United on actual lease rates from 2004 and adopting the advertised asking rate of \$6.50 for the Habitat for Humanity space, as per Avison Young.

In support of these rates the Complainant offered the five year lease signed by Habitat for Humanity for \$4.50 and \$6.00 per sq. ft., a five year sublease signed by Stir Crazy for an average rate of \$12.80, an asking rate of \$7 per sq. ft. for space in the old A&B Sound building, a lease signed by Michaels Arts and Crafts at a rate of \$15.49 and a sublease signed by North West Company LP for \$13.25. In addition the Complainant brought forward a list of three equity comparables to show the contrast between the assessment of the subject and other properties. All of these comparables show low site coverage and two of them also were valued well below the subject, based on a per sq. ft. unit of assessed value. The complainant also had done some analysis of the Respondent's lease comparables to show that when only the lease data from properties within the same economic zone are considered the average per sq. ft. value decreases to \$15.82 per sq. ft.

The Respondent argued that subleases and asking rates do not necessarily reflect market value and should not be given any weight by the CARB. The Respondent offered a list of 62 Junior Big Box stores across the city which have been assessed at the \$17 per sq. ft. rate as is the case for space under 50,000 sq. ft. within the subject. It argued that the subject property has been assessed equitably compared to other similar properties. The Respondent also submitted a list of 27 junior Big Box lease comparables across the city which produced a mean of \$18.39 per sq. ft. and a median of \$17.30 per sq. ft. It was argued that this information supports the

correctness of the \$17 rental rate which has been applied to the subject and other like properties. The Respondent provided similar data in support of the \$14 per sq. ft. rate which has been applied to the space over 50,000 sq. ft. occupied by The Brick.

Findings and Reasons for the Board's Decision:

Rental Rates Applicable to the Subject

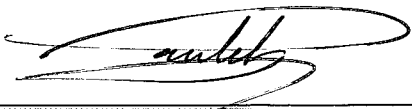
The Complainant's evidence respecting the question of equity and rental rates included properties that appeared not to be comparable or similar to the subject property. The CARB is not prepared to place much weight on asking rates or sublease rates. While the Complainant's evidence and argument was convincing on the question of whether the subject property was atypical of Junior Big Box stores; the evidence and analysis on which the CARB could base a finding in support of a reduced rental rate or a potential adjusted value based on equity was not found. The only alternative advanced by the Complainant, other than the value arising from the sale of the subject, was a pro-forma based on actual lease rates. There was no analysis to show that these rates were typical, given the issues with the subject property. These rates were established in 2004 and are not viewed by the CARB as being reflective of the current market.

For all of the reasons reviewed above, the CARB having rejected the value of the sale of the subject as being representative of market value, found no compelling evidence to persuade it to adjust the current assessed value.

Summary

The CARB in this case found the sale of the subject to be questionable as an arms length transaction and further found that because the property had not been exposed to the open market, weight could not be placed on the sales price. While the CARB found that the subject property is somewhat atypical of the junior Big Box class, it found insufficient basis to address this finding given the evidence before it. The assessment for the subject property is therefore confirmed at a value of \$18,720,000 for the taxable portion of the property.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF September 2011.



Presiding Officer
Paul G. Petry

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
2. R1	Respondent Disclosure

An appeal may be made to the Court of Queen's Bench in accordance with the Municipal Government Act as follows:

470(1) *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.*

470(2) *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).*

470(3) *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*

