

**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:

Oxford Properties Holdings (as represented by Altus Group limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

D. Trueman, PRESIDING OFFICER

Y Nesry, MEMBER

D Morice, 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: 130152606

LOCATION ADDRESS: 100 Anderson Rd. SE.

HEARING NUMBER: 64251

ASSESSMENT: \$436,070,000

This complaint was heard on 19th day of August, 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:

- *Karen Lilly, Doug Hamilton, Michael Kehoe*

Appeared on behalf of the Respondent:

- *Paul Sembrat*

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

At the outset of the hearing it was noted that Karen Lilly formerly worked in administration with the Municipal Government Board at the same time that the Presiding Officer of this hearing was an appointed member to the Board. The respondent had no objection to the Presiding Officer continuing in his capacity for this hearing. It was also noted that the file contained a request for Intervenor Status from AEC International Inc. After a short recess, administration was able to advise the panel that a Withdrawal of Complaint had been filed by AEC International Inc. and simply not delivered to the panel. The parties agreed that there was otherwise no disagreement to the hearing proceeding from a procedural or jurisdictional perspective.

Property Description:

The subject property is a regional shopping mall, known as "Southcentre" located at the northeast corner of McLeod Trail and Anderson Rd., SE.. There are 976,163 ft.² of rentable area not including 11 mini retail units (MRU's) often referred to as carts; but including freestanding buildings on a site or land base of 58.2 acres.

Issues:

The complaint form outlines 9 areas of concern however at hearing the panel were advised that agreement had been reached with the assessor with regard to the assessable area for the anchor tenants as well as a different vacancy allowance. Therefore in order to decide this complaint the panel will need to consider:

- 1/ Whether or not the MRU's are assessable
- 2/ The applicability of capital cost expenditures for upgrades, and
- 3/ The correct rental rate for "large format" space in excess of 15,000 ft.²

Complainant's Requested Value: The complaint form outlines a preliminary requested assessment of \$356,010,000 and the calculations at page 117 of C1 request \$368,390,000. During complainant summation, at hearing, a recalculated assessment request of \$383,244,000 was presented.

Complainant's position

Issue #1 Evidence was led from the Municipal Government Act with respect to the definition of "property" and "improvement". The panel was advised that the MRU's or carts do not fit within these definitions. Further the complainant testified that the MRU's were rented to each operator under a license agreement and not under a conventional real estate lease. Excerpts from "Principles of Property Law" were provided to the Board explaining the differences between a license and a lease. Page 61 of C1 provides photographs of the wheels and the portability of the carts and page 62 provides the panel with a copy of the license agreement. The complainant testified that because the carts were not real estate the income from them should be considered as business income and not as rental income.

Issue #2 The complainant provided expert testimony that retail merchandising required up to date product identification in order to maintain competitive levels. To this end the panel heard that it was necessary for leased premises and the demised area in particular to demonstrate "corporate imaging and branding". The complainant testified that as long as the assessor was going to use typical market rental rates to assess the property it would be necessary for the assessed person to outlay a considerable capital expense to bring certain areas of the subject property up to current standards. He presented estimates from reliable sources and suggested that roughly \$27 million would be required to bring Southcentre to acceptable levels.

Issue #3 the complainant pointed to recent leases of 34,749 ft.² and 24,305 ft.² which were to "Crate and Barrel" and "Sportchek" respectively. The complainant testified that while the lease to Crate and Barrel was signed at \$45.43 per Sq. foot a variety of incentives within that lease reduced the net effective rent to \$13.39 per Sq. foot. He said that on a weighted average basis these two leases suggest that \$22.70 or \$23.00 rounded is a better indication of typical rent for space in excess of 15,000 ft.² than the assessor's use of \$30.00 per square foot.

Respondent's position

Issue #1 The respondent testified that in his opinion the landlord was making a deal with the operator of the cart, whether it be identified as a license or a lease, it was all nevertheless for "spatial services". The Board were directed to page 109 of exhibit R1 where the Appraisal of Real Estate, third Canadian edition, points out that "Potential Gross Income" is derived from in part 'all other forms of income to the real property e.g. income from services supplied to the tenants such as a secretarial service, switchboard service, antenna connections, storage, etc.'. He said that along these lines he was justified in including the income the carts generated in the potential gross incomes of the shopping center.

Issue #2 The respondent advised the panel that his market rent survey each year, that yielded his typical rents for rental properties, was based upon an average of the highs and the lows in the marketplace. He said that for this reason average condition was demonstrated and that should Southcentre be entirely upgraded, to new and current standards, then they would have a center that would be assessed based upon average condition when in fact their improvements would be in new condition. Therefore, it would be necessary for the assessor to adjust some part of his assessment to reflect this like new condition.

Issue #3 The respondent recognized that the lease to Crate and Barrel was evidence of a reduced lease rate after corrections have been made however, he pointed out that the lease to Sportchek at \$32.00 per Sq. foot supported his typical lease rate of \$30.00 per Sq. foot. He said further that his lease rates study on page 34 was from leases in Chinook Center, the subject property itself, and Market Mall, which were all very similar properties. This citywide mean

produced a result of \$29.71 per Sq. foot.

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

Issue #1 The Board noted on questioning the complainants that, while they were unsure who owned the carts, whether it be the shopping center or the operators, they were able to testify that the cart was identifiable with a serial number and that it had a value in the range of \$8-\$12,000. The complainants further agreed on questioning that it would be possible to add the cart income, with respect to the Shopping Center Valuation Guide on page 113 of the exhibit R1, as additional income to the shopping center. The panel understands and respects the generalization that real estate is 'land and securely attached fixtures'. However, reference to the Municipal Government Act (MGA), S289(2) *each assessment must reflect (a) 'the characteristics and physical condition of the property' and (b) 'the valuation and other standards set out in the regulations'* in Matters Relating to Assessment and Taxation Regulation (MRAT), Valuation Standard for a Parcel and Improvements 6(1) *When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value'* and then back to the MGA for Interpretation 1(1) *In this Act (n) "market value" means 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. MGA S 284(r) "property" means (iii) a parcel of land and the improvements to it, and 284(j) "improvement" means (i) a structure and (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** . (emphasis added) The panel accepts the evidence of the respondent that the additional income derived from the cart rental would go to the Potential Gross Income or valuation of the shopping center. Or another way of saying it is that a "willing buyer" would be willing to pay for the cart income. Under these circumstances it is unreasonable for the panel to decide that the carts do anything other than to add value to the shopping center and are thus assessable. The panel decides that the general intent of the ad valorem system requires that the carts be deemed assessable in order to satisfy the requirement for market value. Also under these circumstances it is unnecessary for the panel to attempt to interpret the term "licensed area" as it appears in the license agreement.*

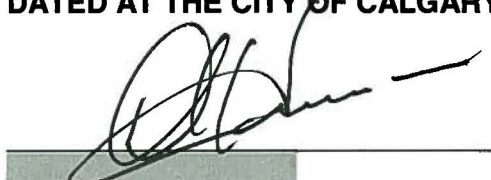
Issue #2 The panel accepts the respondent's testimony that a significant outlay of capital in the form of upgrades and improvements would change the characteristics of the shopping center and thus all, or at least some, of the valuation parameters used in calculating the assessment. In other words, at a minimum, if the subject property were upgraded to like new condition and the capitalization rate selected by the assessor is from properties in average condition, then the capitalization rate appropriate for the subject property would necessarily be adjusted downwards to reflect changed investment parameters.

Issue #3 The panel reviewed the recent leasing activity in the subject property to Crate and Barrel and Sportchek. Although believing the Crate and Barrel lease demonstrated atypical market conditions it considered that a certain amount of support was offered for an appropriate market rental rate of something less than \$30.00 per Sq. foot. A further review of the respondent market lease information which was recent (since 2006) revealed that seven leases ranged from \$19.14 per Sq. foot to \$30.00 per Sq. foot. It was noted that one of the leases within the time frame was at \$56.00 per Sq. foot however, that this lease reported operating costs of \$37.59 per Sq. foot and was thus an outlier in the range. Excluding the \$56 lease the panel determined that \$24.66 per Sq. foot appeared to be a more appropriate lease rate for the subject properties large format tenants. It was therefore decided to reduce the lease rate for areas in excess of 15,000 ft.² accordingly, to \$25.00 per Sq. foot.

Board's Decision:

The Board accepts the parties agreements regarding Anchor tenant assessable area and vacancy allowance and further reduces the assessment to reflect a \$25.00 per sq ft rental rate for CRU 15,001+ sq ft for a final assessment of **\$417,620,000.00**

DATED AT THE CITY OF CALGARY THIS 28 DAY OF September 2011.



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

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

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 MGB Administrative Use Only

<i>Decision No. 1905-2011-P</i>		<i>Roll No. 130152606</i>		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Retail	Regional Mall	Income Approach	Net Market Rent

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CARB	Retail	Regional Mall	Income Approach	Leaseable area
CARB	Retail	Regional Mall	Income Approach	Expenses Maintenance