

**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:

***Marble Arch Properties Ltd.
(as represented by Altus Group Limited), COMPLAINANT***

and

The City of Calgary, RESPONDENT

before:

***J. Dawson, PRESIDING OFFICER
M. Grace, MEMBER
J. Pratt, MEMBER***

This is a complaint to the Calgary Composite Assessment Review Board [CARB] in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2012 Assessment Roll as follows:

ROLL NUMBER:	054013503
LOCATION ADDRESS:	1107 33 Street NE
LEGAL DESCRIPTION:	Plan 7810454; Block 12; Lot 7
HEARING NUMBER:	68214
ASSESSMENT:	\$ 19,240,000

- [1] This complaint was heard on the 15 day of October, 2012 at the office of the Assessment Review Board [ARB] located at Floor Number 3, 1212 31 Avenue NE, Calgary, Alberta, Boardroom 8.
- [2] Appeared on behalf of the Complainant:
- K. Fong Agent, Altus Group Limited
- [3] Appeared on behalf of the Respondent:
- R. Farkas Assessor, City of Calgary

SECTION A: Preliminary, Procedural or Jurisdictional Issues:

- [4] No preliminary, procedural, or jurisdictional matters were identified.

SECTION B: Issues of Merit

Property Description:

- [5] Constructed in 1980, the subject – 1107 33 Street NE, is a strip centre comprised of three spaces that have been assessed as individual freestanding retail buildings. The subject has a Land Use Designation [LUD] of Commercial – Regional 1 (C-R1) and is located in a predominately industrial area within the community of Franklin along 33 Street north of 8 Avenue NE. 36 Street's predominate use of retail is to the east, while 33 Street and west is predominately industrial uses.
- [6] The Respondent prepared the assessment showing 135,866 square feet: 1) 29,866 square feet of big box 14,001 to 40,000 square feet utilised as a gaming establishment graded as a 'C-' quality; 2) 50,000 square feet of big box 40,001 to 80,000 square feet graded as a 'D' quality; 3) 50,000 square feet of retail upper level graded as a 'D' quality; and 4) 6,000 square feet of retail 2,501 to 6,000 square feet graded as a 'C-' quality. The site has an area of 291,927 square feet.

Matters and Issues:

- [7] The Complainant identified two matters on the complaint form:
- Matter #3 - an assessment amount*
 - Matter #4 - an assessment class*
- [8] Following the hearing, the Board met and discerned that these are the relevant questions which needed to be answered within this decision:
1. *Is the subjects' main retail area; 1) a big box 40,001 to 80,000 square foot*

Commercial Retail Unit with upper level retail, or 2) a big box 80,001 plus square foot Commercial Retail Unit?

2. *What is the correct rental rate for 'D' quality, retail space within the subject?*

Complainant's Requested Value:

- \$11,340,000 on complaint form
- \$11,050,000 in disclosure document
- \$11,560,000 verbally provided at hearing and confirmed as the request

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

Matter #3 - an assessment amount

Question 1 ***Is the subjects' main retail area; 1) a big box 40,001 to 80,000 square foot Commercial Retail Unit with upper level retail, or 2) a big box 80,001 plus square foot Commercial Retail Unit?***

Complainant's position

- [9] The Complainant argues that the space utilised by Army and Navy Department Store is one continuous space with a single entrance and exit. At 100,000 square feet, the Complainant suggests that the space should be stratified with other big box stores in the 80,001 plus retail big box stratification. (C1 p. 4)
- [10] The space was built for the current tenant and has not been built with features that would permit it to lease the second floor to a different tenant. The space has one common entrance. (C1 p. 4)
- [11] The Complainant reviewed the subject with; 2012 Property Assessment Notice, Property Assessment Summary Report, 2012 Business Assessment Notice, maps, and photos. (C1 pp. 84-103)
- [12] The Complainant provided a report produced by the Respondent entitled; '2012 Lease Comparables – Big Box 40,001 – 80,000 Square Feet'. The Complainant added to the report showing the eight comparables with the type of assessment and the tenant names. The report shows that the Respondent assessed all retail spaces the same way regardless of location, land use designation or quality. The report derives a median of \$12.50 per square foot and a mean of \$13.31 per square foot. (C1 pp. 107-116)
- [13] The Complainant provided a report entitled; 'Retail Anchor Space > 80,001 Square Feet'. The Complainant included eight comparables with the tenant names. Property type, land use designation and quality were not identified. The report derives a net median of \$7.61 per square foot and a mean of \$7.84 per square foot. There is a note indicating a mean of the 'C' quality leases is \$5.73 per square foot; however, the leases that make up this rate were not identified within the chart. (C1 pp. 118-126)
- [14] The Complainant provided a report entitled; 'Market Rents for Tenants in Similar Class'. The

Complainant included ten comparables with the tenant names. Property type, land use designation and quality were not identified. The report derives no conclusion; however, the Complainant testified that these superior locations are assessed at \$5 per square foot. (C1 pp. 127-139)

- [15] The Complainant included photos and part of the Non-Residential Properties – Income Approach Valuation report to show that a similar style of store (two levels with a common entrance and exit), that is utilised by one tenant is assessed at the same rate for both levels. Property type, land use designation and quality were not identified. (C1 pp. 140-142)
- [16] The Complainant added a report showing the four lease and four equity comparables for the 14,001 – 40,000 Square Foot stratification. No space size is included making comparability difficult. The conclusion the Complainant wanted to express is that the difference between ‘A’ quality and ‘C’ quality is \$6 per square foot or 35%. (C1 p. 144)
- [17] The Complainant provided a report produced by the Respondent entitled; ‘2012 Lease Comparables – Big Box 14,001 – 40,000 Square Feet’. The report, with 28 leases, shows that the Respondent assessed all retail spaces the same way regardless of location, land use designation or quality. The report derives a median of \$17.00 per square foot and a mean of \$17.36 per square foot. (C1 pp. 145)
- [18] The Complainant provided a report produced by the Respondent entitled; ‘2012 Lease Comparables – Big Box 14,001 – 40,000 Square Feet ‘C’ Class’. The report, with 3 leases, shows that the Respondent assessed all retail spaces the same way regardless of location or land use designation. The report derives a median of \$11.00 per square foot and a mean of \$11.24 per square foot. (C1 pp. 146)
- [19] The Complainant concluded with a requested assessment of \$11,050,000 using all values presented by the Respondent except the big box 40,001 to 80,000 square foot retail space main and retail upper level values are changed to \$5 per square foot. The Complainant later identified a calculation error resulting in a verbal request of \$11,560,000. (C1 p. 148)

Respondent's position

- [20] The Respondent asserted that the assessed rates are correct and equitable. (R1 p. 2)
- [21] The Respondent reviewed the subject details; maps, photos, and Non-Residential Properties – Income Approach Valuation. (R1 pp. 4-12)
- [22] The Respondent presented their report entitled; ‘2012 Lease Comparables 40,001 – 80,000 square feet’. The eight comparables ranged in size from 40,673 square feet to 72,053 square feet with no median and mean size reported. Verbally the Respondent indicated that these are ‘C’ and lower quality spaces. The leases’ commencement dates ranged from October 1998 to March 2011. The median rental rate is \$12.50 per square foot and the mean is \$13.31 per square foot. (R1 p. 13)
- [23] The Respondent presented their report entitled; ‘2012 Lease Comparables 80,001 plus square feet’. The five comparables ranged in size from 95,423 square feet to 132,228 square feet with no median and mean size reported. The leases’ commencement dates ranged from March 1996 to August 2008. The median rental rate is \$10.00 and the mean is \$10.80. (R1 p. 14)

- [24] The Respondent included equity comparables of spaces 40,001 to 80,000 square feet. All are assessed at \$12.50 per square foot. (R1 pp. 30-47)
- [25] The Respondent provided three Board decisions of the subject property for 2009, 2010 and 2011; all essentially confirming the assessments at or close to the original assessment. CARB 0758/2011-P, ARB 1012/2010-P, and ARB 0231/2009-P. (R1 pp. 32-40)
- [26] The Respondent concluded with a statement that the assessment of the subject is correct, fair and equitable as a big box store, and the leases support the assessment. (R1 p. 20)

Complainant's rebuttal

- [27] The Complainant re-presented the Respondent's report entitled; '2012 Lease Comparables 40,001 – 80,000 square feet'. The Respondent showed that the market has not seen a change in rental rates over the years as seen with a lease signed in 1998 for a similar property as a lease signed in 2011. The difference was 8 cents per square foot. The re-presented report sheds light on that information; the lease signed in 1998 was for an 'A+' quality building built in 1998, while the lease signed in 2011 was for a 'C+' quality building built in 1976. The Complainant is showing that the Respondent has incorrectly stratified the properties within this category so that the report should not have any weight given to it. (C2 p. 3)
- [28] The Complainant emphasised that the subject is not a big box retail store of 40,001 to 80,000 square feet. It is a freestanding retail location of 100,000 square feet and is not comparable to any of the comparables presented by the Respondent. (C2 pp. 4-12)
- [29] The Complainant re-presented the Respondent's report entitled; '2012 Lease Comparables 80,001 + square feet'. The re-presented report indicates that the properties that comprise the report are all 'B' quality or better and built in 1996 or newer while the subject is 'D' quality and built in 1980. (C2 p. 13-21)
- [30] The Complainant presented a Board decision; CARB 0783/2012-P to show that the Board, for a property near the subject, lowered the assessment because the property did not meet current land use designation requirements and could not attract typical rental rates. (C2 pp. 22-25)

Board's findings

- [31] The Board is persuaded by the evidence from the Complainant that there is something wrong with the assessment for the subject property. While considering the evidence of the Respondent the Board is not convinced that the Respondent has correctly stratified the subject – it is clearly a 100,000 square foot retail space within a predominately industrial area that is adjacent to retail. It is not what the Board would consider a typical big box retailer, found in high traffic and high exposure retail destinations.
- [32] The Board considers the evidence from both parties to be weak and must rely upon the only evidence that seems to come close to the subject; the Board accepts the value presented on page 118 of the Complainant's Disclosure as an appropriate value for the subject. The value presented of \$5.73 per square foot for 'C' grade leases has been rounded to \$6. (C1 p. 118)


Matter #4 - an assessment class

- [33] The Board did not hear any evidence requesting a change in an assessment class from its current non-residential designation.

Board's Decision:

- [34] After considering all the evidence and argument before the Board it is determined that the subject's assessment is changed to a value of \$12,860,000, which reflects market value and is fair and equitable.

DATED AT THE CITY OF CALGARY THIS 18 DAY OF December 2012.



J. Dawson
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure – 171 pages
2. R1	Respondent Disclosure – 49 pages
3. C2	Rebuttal Disclosure – 25 pages

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.*

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Strip Centre	Income Approach	Market Rental Rate