

**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:

***BALBOA LAND INVESTMENTS INC., COMPLAINANT
(Represented by Altus Group Ltd.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member Y. NESRY
Board Member R. ROY***

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 2012 Assessment Roll as follows:

ROLL NUMBER: 200176428

LOCATION ADDRESS: 100 8 AVENUE SE

FILE NUMBER: 68471

ASSESSMENT: \$3,110,000.00

This complaint was heard on 1st day of October, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- M. Cameron, Altus Group Ltd. – Representing Balboa Land Investments Inc.
- D. Genereux, Altus Group Ltd. - Representing Balboa Land Investments Inc.

Appeared on behalf of the Respondent:

- E. Borisenko – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] A preliminary request, presented by the Complainant, to have the evidence submitted for this hearing is cross referenced to the balance of the hearings scheduled for this session of the Composite Assessment Review Board (CARB) was submitted. The Complainant states that with the exception of one additional issue for Roll Number 068083203, the common issue of rental rate was applicable to all seven hearings. The Complainant states the evidence for the requested rental rate value was identical for each complaint. For each hearing the relevant information for each property would be presented, but the evidence for the rental rate argument would not be repeated.

[3] The Respondent had no objection to the presentation process presented by the Complainant and stated a large portion of its evidence was the same for each of the seven hearings.

[4] In the interest of efficiency, and not wishing to make the parties repeat themselves, the Board accepts the request by the Complainant and the Responded to cross reference the evidence presented. Both parties will present evidence specific to the individual complaint.

[5] The initial hearing, during which the main evidence with respect to the common issue was presented, was File Number 68555 Roll Number 068107200. The evidence and decision on the evidence will apply to the following hearings:

FILE NUMBER	ROLL NUMBER	LOCATION ADDRESS
67939	068080902	218 8 AVENUE SW
68551	068082908	102 8 AVENUE SW
68552	068083203	114 8 AVENUE SW
68553	068083401	120 8 AVENUE SW
68554	068106004	101 8 AVENUE SW
68555	068107200	221 8 AVENUE SW
68471	200176428	100 8 AVENUE SE

Property Description:

[6] The subject property is a retail building located at 100 8 Avenue SE on Stephen Avenue or DT8 Market Zone of the Calgary Downtown. The building, known for the restaurant Catch & The Oyster Bar, was constructed in 1886. The structure is two levels with a total assessed area of 9,881 square feet, consisting of 5,027 square feet of upper level retail space, 2,654 square feet of main level retail space and 2,200 square feet of lower level retail space. The subject is adjacent to the Hyatt Hotel with an interior access to the hotel.

[7] The property has been assessed using an Income Approach to Value for \$3,110,000.00.

Complainant's Requested Value: \$2,894,000.00.

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

[8] In the interest of brevity, the Board will restrict its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflect on the evidence presented and examined by the parties before the Board at the time of the hearing.

[9] Both the Complainant and the Respondent submitted background material in the form of aerial photographs, ground level photographs, site maps and City of Calgary Assessment Summary Reports and Income Approach Valuation Reports.

[10] Prior Assessment Review Board decisions were placed before the Board in support of requested positions of the parties. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issue:

[11] The typical rental rate of \$33.00 per square foot of main floor retail space is incorrect and should be reduced to \$27.00 per square foot.

Complainant's Evidence:

[12] The Complainant argued the \$33.00 per square foot typical rental rate used by the assessor in determining the assessments for the subject property was too high and therefore was not reflective of the market conditions on the valuation date of July 1, 2011. The Complainant submitted its analysis of leases for comparable properties, supported by backup documentation and determined that a revised rental rate of \$27.00 per square foot was warranted. The Complainant requested the revised rate be applied to the calculation to determine the assessment for the seven properties under complaint before the Board.

[13] The Complainant submitted three leases from three separate properties located on Stephen Avenue and the lease for the subject building:

Building Name	Address	Lease Start	Lease End	Term	Leased Area (sq. ft.)	Rate (\$/sq. ft.)
Hudson's Block	102 8 Avenue SW	1-Oct-2010	31-Dec-2018	7.25	7,684	\$24.50
Ashdown Building	110 8 Avenue SW	15-July-2010	14-July-2020	10	3,288	\$33.00
Turner Hicks	220 8 Avenue SW	1-Feb-2011	31-Jan-2021	10	2,819	\$30.00
					Average	\$29.17
					Median	\$30.00
					Weighted Average	\$27.65
Christopher Building	221 8 Avenue SW	1-Feb-2011	31-Jan-2026	15	11,898	\$21.65

(C1, Pg. 20 & 25)

[14] The Complainant notes the Christopher Building property was signed for one lease, for all three levels, at a rental rate of \$21.65 per square foot. No lease information was available to show any distinction between the rental rates applied to individual levels to determine the blended rate.

[15] The Complainant argued the application of \$27.00 per square foot for the main floor area and the typical rates of \$20.00 per square foot for the upper and lower retail spaces would result in a Blended rate of \$22.33 per square foot, which supported the newest lease on Stephen Avenue. (C1, Pg. 25)

Respondent's Evidence:

[16] The Respondent submitted 34 equity comparables located on Stephen Avenue, all of which were assessed at typical rates of \$33.00 per square foot for main floor retail space and \$20.00 per square foot for upper and basement retail space. (R1, Pg. 17) The list of equity comparables was divided into two groups, those properties that were evaluated as Historical Resources and those not evaluated. The subject property was not on the list of Evaluated Historical Resources, but the Respondent noted the Complainant's three comparable buildings were part of the inventory.

[17] The Respondent noted the subject property had been extensively renovated over time and in association with the Hyatt Hotel development.

[18] The Respondent submitted an analysis of ten leases from the DT8 or Stephen Avenue market zone, with the flowing results:

Address	Lease Start	Term (Years)	Area (Sq. Ft.)	Rate (\$/Sq. Ft.)
109 8 Avenue SW	1-Aug-2009	5	500	45.00
222 8 Avenue SW	1-Sept-2009	10	3,000	40.00
805 1 Street SW	15-Nov-2009	10	1,060	67.50

805 1 Street SW	5-Feb-2010	10	1,190	50.00
125 8 Avenue SW	1-Mar-2010	5	7,600	34.21
226 8 Avenue SW	1-Jul-2010	5	4,250	45.00
805 1 Street SW	1-Jul-2010	10	720	32.50
110 8 Avenue SW	15-Jul-2010	10	3,288	31.00
805 1 Street SW	1-Sept-2010	10	740	85.00
805 1 Street SW	1-Dec-2010	5	1,556	25.00
			MEAN 2 YEARS	45.52
			MEDIAN 2 YEARS	42.50
			WEIGHTED MEAN 2 YEARS	39.82
			Without Fashion Central	
			Mean 2 years	39.04
			Median 2 years	40.00
			Weighted mean 2 years	37.33
			STEPHEN AVENUE MAIN FLOOR RETAIL RATE	33.00

(R1, Pg. 18)

[19] The Respondent noted the leases at 805 1 Street SW were excluded due to the character of the building. It was submitted the leases in the building were atypical for retail space on Stephen Avenue.

[20] The Respondent noted that gross leases, month-to-month leases and non-arms length leases were excluded from the analysis. Also leases for entire multi-level buildings were not considered good indicators of values for each floor and were also excluded from the analysis.

[21] The Respondent presented argument that two of the Complainant's lease comparables were not valid leases under the criteria established by the City of Calgary Assessment Business Unit (ABU). (R1, Pg. 19) The Respondent stated the lease on 102 8 Avenue SW was a non-arms length transaction, based upon corporate searches and the Assessment Request for Information (ARFI) returned to the ABU. The Respondent submitted a portion of the ARFI for 102 8 Avenue SW on which the Respondent to the survey indicated the space was owner occupied. (R1, Pg. 23)

[22] The Respondent's review of the Hudson Block established through Corporate Searches, a link between Coril Holdings Ltd. and Balboa Land Investments Inc. in that there was a common director, Ronald N. Mannix, and the Voting Shareholder for Balboa Land Investments Inc. was Coril Holdings Ltd. (R1, Pg.24-31) Balboa is registered as the owner of 102 8 Avenue SW. (R1, Pg. 25)

[23] The second lease challenged was on 220 8 Avenue SW which the Respondent stated was reported to the ABU as a gross lease and was therefore not used in any analysis. The Respondent submitted the assessment, based on the \$33.00 rental rate, for this property was appealed and confirmed.

[24] The Respondent submitted six sales of properties on Stephen Avenue, showing a mean of \$446.00, a median of \$423.00 and a weighted mean of \$416.00 per square foot. (R1, Pg. 32-41)

Complainant's Rebuttal:

[25] The Complainant submitted challenges to each of the Respondent's leases:

Lease	Address	Lease Start	Area (Sq. Ft.)	Notes
1	109 8 Avenue SW	1-Aug-2009	500	\$45.00 2009 lease=not comparable
2	222 8 Avenue SW	1-Sept-2009	3,000	\$40.00 2009 lease + interior mall access
3	805 1 Street SW	15-Nov-2009	1,060	\$67.50 Fashion Central
4	805 1 Street SW	5-Feb-2010	1,190	\$50.00 Fashion Central
5	125 8 Avenue SW	1-Mar-2010	7,600	\$34.21 2010 lease = not comparable The Bank Nightclub – 30 foot ceilings
6	226 8 Avenue SW	1-Jul-2010	4,250	\$45.00 lease + not comparable Grand & Toy Renewal + interior mall access
7	805 1 Street SW	1-Jul-2010	720	\$32.50 Fashion Central
8	110 8 Avenue SW	15-Jul-2010	3,288	\$31.00 is for Pub Downstairs Should not be used for Main Retail Rate
9	805 1 Street SW	1-Sept-2010	740	\$85.00 Fashion Central
10	805 1 Street SW	1-Dec-2010	1,556	\$25.00 Fashion Central

(C2, Pg. 5)

[26] The Complainant analyzed the Respondent's leases looking at means, medians and weighted means for all the leases, leases before July of 2010 and after 2010 and both with and without Fashion Central, in the calculations.

[27] The Complainant submitted a photo of the Bank on 8th at 125 8 Avenue SW (Lease 5) to show the height of the interior space. (C2, Pg. 6-7) The Complainant submitted the space was not comparable due to the extra height of the walls and the lease was before July 1, 2010.

[28] For Leases 2 and 6 at 222 8 Avenue SW and 226 8 Avenue SW, the Complainant submitted photos to show the interior mall to which the retail operations had access. (C2, Pg. 8) The Complainant submitted the spaces were atypical due to the access they have to the interior mall area of the Scotia Centre which allows access to other buildings along Stephen Avenue.

[29] For Leases 3, 4, 7, 9 and 10 at 805 1 Street SW, the Complainant submitted photos to show the exterior and the interior use of space. (C2, Pg. 13-23) It was the Complainant's argument that Fashion Central was not a comparable property for it was in essence an enclosed mini-mall with numerous interior stores with rental rates significantly higher than the normal retail space rental rate on Stephen Avenue.

[30] For Lease 8 at 110 8 Avenue SW the Complainant submitted a photo of the entrance to

the lower level pub. (C2, Pg. 24-25) The Complainant testified that in researching the leases it found the lease submitted by the Respondent was for a basement pub, not a main level retail space. The Complainant submitted the correct lease for the main level retail was \$33.00 per square foot.

[31] In rebuttal to the Respondent's claim the leases for 220 8 Avenue SW were gross leases, the Complainant submitted a copy of an ARFI dated May 13, 2011 which indicated the leases were a mix of net and gross leases, but the one submitted by the Complainant was a net leases. The Complainant, in verbal testimony, stated the lease for 2,819 square feet was a net lease renewal January 1, 2011 for \$30.00 per square foot.

[32] The Complainant submitted an email, dated September 21, 2012, from Judi Ethier, Controller for Balboa Land Investments Inc. which stated, "Coril Holdings Ltd leases the entire Hudson block for Balboa at market rents. Coril is Balboa's parent company; however, the property was leased at market rents at that time in order to eliminate any related party conflict. (C2, Pg. 32)

[33] The Complainant submitted an analysis of two Respondent leases and four Complainant's leases to support the requested rate of \$27.00. (C2, Pg. 33)

Address	Area (Sq. Ft.)	Rate (\$/Sq. Ft.)
125 8 Avenue SW	7,600	34.21
110 8 Avenue SW	3,288	31.00
102 8 Avenue SW	7,684	24.50
110 8 Avenue SW	3,288	33.00
220 8 Avenue SW	2,819	30.00
221 8 Avenue SW	11,898	21.65
	Weighted Mean	27.36
	Average	28.82
	Median	30.50

[34] A second analysis was presented with the removal of the leases in the Hudson Block at 102 8 Avenue SW.

Address	Area (Sq. Ft.)	Rate (\$/Sq. Ft.)
125 8 Avenue SW	7,600	34.21
110 8 Avenue SW	3,288	31.00
110 8 Avenue SW	3,288	33.00
220 8 Avenue SW	2,819	30.00
221 8 Avenue SW	11,898	21.65
	Weighted Mean	28.12
	Average	29.66
	Median	31.00

[35] Numerous rebuttal documents were submitted with respect to the sales on Stephen Avenue.

Findings of The Board:

[36] The Board noted the Complainant's requested assessment was based upon incorrect areas for the three levels of the subject property. The areas, corrected for the amended notice, were provided to the Complainant in the Respondent's evidence. No argument was submitted by the Complainant, in the rebuttal, to challenge the new areas. The Board based its decision on the new areas.

[37] Use of the corrected areas would not significantly alter the conclusion of the Complainant with respect to the blended rate analysis using the requested \$27.00 and the typical \$20.00 rates per square foot.

[38] With respect to the Respondent's challenge to the Complainant's leases, The Board found there is a question with respect to the lease at 102 8 Avenue SW in that the owner and the lessee are the same company. It was submitted into evidence that Coril Holdings Ltd. is the parent company of Balboa Land Investments Inc., from whom Coril leases the space. The Board was unable to accept this lease as arms length and accordingly, excluded it from any analysis. The Board noted the Complainant was prepared to exclude this lease in its final analysis.

[39] The Board did not accept the Respondent's challenge to the lease at 220 8 Avenue SW. The Board found the Complainant had presented sufficient information to show the leases was a net lease and accepts the rental rate as submitted by the Complainant.

[40] The Board found the use of the lease for the property at 221 8 Avenue SW was not a good indicator of a main floor rental rate as the rate was a blended rate of 3 levels of retail, testified to by the Complainant. The Complainant was unable to show how the blended rate had been established through the submission of leases or testimony by the owner or lessee. Accordingly, the lease was excluded from an analysis in the deliberations.

[41] The Board accepted the position of the Complainant and the Respondent that Fashion Central is an atypical retail operation and excluded the leases from 805 1 Street SW from the analysis and deliberation of the Board.

[42] With respect to the two leases for retail operations with access to the interior mall, the Board found the Complainant had provided no evidence to support its position for the removal of Leases 2 and 6. The Complainant failed to show the lease rates were atypical or how much the leases should be adjusted for the access. The Complainant failed to show the volume of traffic which accesses the retail operations from the interior mall.

[43] For Lease 8, the Complainant, in verbal testimony, stated it had found an error in the Respondent's submission in that the wrong lease had been selected. The Complainant argued the Respondent had used the lease for the 'Bear and Kit' pub which was located in the lower level. The Complainant submitted photography of an entrance to support the verbal testimony, but not the actual lease to verify the argument. The Board found a picture may be worth a thousand words, but a copy of a lease is better evidence. The Board did not challenge the word of the Complainant and accepted the rental rate at \$33.00 per square foot for the main level space at 110 8 Avenue SW.

[44] The Board found the Complainant's setting of a July 1, 2010 cut-off to exclude leases is an arbitrary dateline, without support or evidence to justify the assumption. The Board did not

accept the limitation as set and accepted the sales for 2009 and 2010 as indicators of leases on Stephen Avenue.

[45] The Board, following a review of the evidence submitted by both parties, accepted seven leases as indicators of lease rates on Stephen Avenue:

Address	Area (Sq. Ft.)	Rate (\$/Sq. Ft.)
125 8 Avenue SW	7,600	34.21
110 8 Avenue SW	3,288	33.00
109 8 Avenue SW	500	45.00
102 8 Avenue SW	7,684	24.50
222 8 Avenue SW	3,000	40.00
220 8 Avenue SW	2,819	30.00
226 8 Avenue SW	4,250	45.00
	Weighted Mean	33.45
	Average	35.96
	Median	34.21

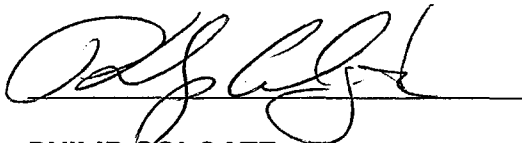
[46] Based upon the Board's analysis of the leases, the Board found the Complainant had provided insufficient evidence to alter the rental rate as applied.

[47] The Board found the evidence submitted with respect to the sales was not relevant to the issue placed before it, specifically the typical rental rate for retail space on Stephen Avenue. Accordingly, the Board placed no weight on this evidence in its deliberations.

Board's Decision:

[48] For the reasons provided, the Board confirms the assessment at \$3,110,000.00.

DATED AT THE CITY OF CALGARY THIS 7th DAY OF November 2012.



PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. 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 ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Income Approach	Net Market Rent/Lease Rates