

**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:

***Alex and Rita Leung Holdings LTD. (as represented by Altus Group LTD.),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***K. D. Kelly, PRESIDING OFFICER
A. Wong, MEMBER
B. Jerchel, 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:	201038924
LOCATION ADDRESS:	233 – 16 AV NW
HEARING NUMBER:	60704
ASSESSMENT:	\$4,680,000

This complaint was heard on 23rd day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *Mr. K. Fong - Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *Mr. G. Good - Assessor, City of Calgary*

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

None

Property Description:

The subject is a retail strip mall complex on 28,741 square feet (SF) of land fronting onto 16th AV NW. The site is zoned Commercial and contains a total of 6,970 square feet (SF) of CRU retail spaces under 1,000 SF, and 6,382 SF of CRU retail spaces sized between 1,001 – 2,500 SF for a total of 13,352 SF of retail space. The subject also has 3,326 SF of second-floor office space. The subject was constructed in 1994 and is classified as a "B+" quality building. It is located in the Crescent Heights Community. The subject is assessed using the Income Approach to Value at \$4,680,000.

Issues:

Issue #1:

The rent rate used in the assessment calculation for the office space is excessive and inequitable.

Issue #2:

The rent rate used to assess the Commercial Retail Unit (CRU) retail space under 1,000 SF in the subject is excessive and inequitable.

Issue #3:

The vacancy rates used to assess the three components of the subject are inequitable when compared to similar properties.

Complainant's Requested Value: \$3,555,000

Board's Review and Decision in Respect of Each Matter or Issue:**Issue #1**

"The rent rate used in the assessment calculation for the office space is excessive and inequitable."

The Complainant presented his Brief C-1 and argued that the \$20 per SF rent rate for the 3,326 SF of medical office space in the subject should be \$11 per SF. He argued that the office space is not particularly visible from 16 AV NW and is "tucked away" in the rear corner and on the second floor of the subject. He also noted that access and egress to and from the site to 16 Avenue is limited to only one point on the property, and this means that accessing the resident businesses and the office space, is particularly troublesome. The Complainant provided several maps and exterior photographs of the site to illustrate this point.

The Complainant provided the "Tenant Summary" for the subject on page 26 of C-1 and identified the square footage for rentable spaces; lease particulars, and annual rents for ground floor and second floor spaces. He noted that the office spaces demonstrated actual current and valid leases in place averaging \$22.46 per SF, with a median of \$23 per SF. He suggested, but failed to provide evidence, that 1,392 SF of Unit #107 space showing \$6 per SF was common property and perhaps should not be assessed at all. Ultimately, the Complainant withdrew this matter.

The Complainant noted that the CRU spaces in the subject also demonstrated valid leases averaging \$20.15 per SF and a median of \$20 per SF. Second floor office space (evidently in a non-arms length lease between the property owner and his professional corporation) demonstrated \$6 per SF.

On page 29 of C-1 the Complainant presented a matrix containing excerpts of seven lease comparables from "Upper Office at Retail Centres". He noted the lease commencement and expiration dates and identified the lease rates – all of which averaged \$10.99 per SF and demonstrated a median value of \$11 per SF. Therefore, he argued, this data supported his request for \$11 per SF for the upper office space in the subject. However, it was noted by the Respondent that none of the properties were on 16 Avenue.

On pages 42 and 43 of C-1 the Complainant provided as an equity comparable, an "Upper Office" lease matrix (tenant list) for four spaces in a retail strip property at 5269 Memorial DR SE – i.e. one of his comparables in the page 29 matrix noted above. The page 43 matrix showed four leases in the Memorial Dr site having a range of commencement dates from Sept. 1, 2007 to Dec. 1, 2010. The rent rates ranged from \$5.50 to \$14.67 per SF. The Respondent noted however in questioning that two of the spaces leasing for \$5.50 and \$6 per SF were for non-profit groups and were atypical.

The Complainant provided three office equity comparables (including photos) on pages 45 to 53 of C-1, noting that the office portions were assessed using \$14 per SF whereas the subject was assessed at \$20 per SF. However it was noted by the Respondent that the three comparables were stand-alone buildings whereas the subject is a strip mall, and the assessments for each are different because of the difference in building type and the market for each.

On page 54 of C-1 the Complainant provided a matrix of six additional office space equity comparables and noted that they were all assessed at \$11 per SF. He provided the City's "Assessment Summary Reports" and exterior photos for each of them on pages 55, 61, 63, 59,

65, and 67 respectively. He argued that this evidence supports his request for \$11 per SF for the office space in the subject.

The Complainant provided a rebuttal document C-2 wherein he provided additional rent and tenant rolls and leases. He argued that this information rebuts the City's lease evidence and supports an office rate less than \$20 per SF as he has argued in C-1 prior.

The Respondent provided his Brief R-1 and argued that the Complainant's lease matrix on page 29 of C-1 is flawed and unreliable because it contains two leases that are "dated" and commenced in 2007. He noted that they would not have been included in the City's analysis due to their age. He also noted a 2010 lease in the matrix and clarified that it is in fact a 2006 lease and is also considered "dated". He supplied the City's "Assessment Request For Information" (ARFI) form to confirm this matter. The Respondent noted, and the Complainant clarified that a fourth lease at 555 – 36 ST NW was also not an arms-length lease because of an affiliation between the lessee and the owner.

The Respondent noted that a third property in the Complainant's page 29 seven-lease matrix, a site at 5269 Memorial Drive NE was a non-profit organization whose lease rate is not typical. Therefore, the Respondent argued that the Complainant's lease data in this matrix, and his tenant roll matrix on page 43 of C-1, is/are flawed and does/do not support \$11 per SF. On the contrary the Respondent noted, the Complainant's evidence supports \$15 per SF.

In addition, the Respondent argued that while the Complainant has identified three nearby properties along 16 AV NW as comparables to support an \$11 per SF office rate, the three sites are all stand-alone properties and are not in retail strip malls like the subject. He identified them as two banks and an office building.

The Respondent provided a matrix on page 25 of R-1 showing nine valid and in-time lease comparables from seven different buildings to support the assessed \$20 per SF office lease rate. The indicated median value was \$20 per SF and the Average was \$18.76 per SF. He clarified that two of the leased sites at 5403 Crowchild TR NW were assessed at \$18, and therefore, when the matrix is adjusted and this value is factored in, the Median is \$18 per SF and the Average is \$18.32 per SF. Therefore he concluded that perhaps \$18 per SF and not \$20 per SF might be more appropriate for the upper office space in the subject.

Board's Decision in Respect of Issue #1- Reasons

The Board noted that the Complainant's evidence suggests that \$15 per SF is appropriate for the upper office space for the subject. The Respondent's evidence suggests that \$18 per SF is appropriate for the subject. The Board considers that the most likely value rests somewhere between the two values, and is certainly not \$11 per SF as sought by the Complainant.

The Board notes that pages 24 and 25 of R-1 display the desired and supportable lease comparables from both parties.

Referencing the Complainant's valid three leases on page 24 (i.e. two at 555 – 36 ST NW and one at 5269 Memorial Dr NE) and noting that it was acknowledged by the parties that the "Trinity" lease at 555 – 36 ST NW should be disregarded, it was noted that the total value of those three valid leases is \$45.34.

Referencing the Respondent's nine leases on page 25 of R-1, and noting the correction from \$20 to \$18 per SF for 5403 Crowchild TR NW, the total value of those nine leases is \$164.85. The total value from both page 24 and 25 matrices is \$210.19, which, when averaged by the 12 properties, indicates an average value of \$17.52, or \$17 per SF (rounded). The \$17 per SF value is also supported by a portion of a rent roll in the Complainant's C-2 page 25, where a similar sized and located upper office medial space (Unit 325) is leased for \$17 per SF.

Therefore the Board will re-calculate the assessment for the subject using the value of \$17 per SF for the 3,326 SF of upper office space.

Issue #2

"The rent rate used to assess the Commercial Retail Unit (CRU) retail space under 1,000 SF in the subject is excessive and inequitable."

The Complainant argued that the \$23 per SF assessed rate for the CRU 0-1,000 SF space in the subject should be \$20 per SF instead of the assessed \$23 per SF. In support of this position, on pages 39 to 41 of C-1 he provided a brief excerpt – i.e. pages 74, 75, and 76 of the Rent Roll, from a strip mall at 555 – 36 ST NE (Northgate Village). In perusing this information and identifying at least two leased areas (217 and 230), he argued that space in this mall, similar to the subject, is leasing at various values but certainly less than \$23 per SF. However, in response to questioning from the Respondent it was acknowledged that the occupants of Unit #217 enjoy a business relationship with the property owner and therefore this lease is probably not entirely at "arms length".

The Complainant also provided on pages 34 and 35 of C-1, two pages from the rent roll for Centre Pointe Plaza – i.e pages 28 and 29, and identified two leases (Units 201 and 202) which he argued supported his request for \$20 per SF for the subject.

The Respondent however noted that the complete rent roll for neither of the two properties was presented by the Complainant – only selected excerpts. Therefore he considered the information to be selective and incomplete. In addition he argued, the "Tenant Summary" for the subject on page 27 of C-1 in the Complainant's evidence, identified CRU 0-1,000 SF space in the subject as achieving an average/median of \$20 per SF, but it is a "site-specific" value and is not representative of "typical" values that the City has calculated and must use in Mass Appraisal. The Respondent argued therefore that the Complainant has provided insufficient and selective information to try to demonstrate that the \$23 per SF assessed rent rate for the subject for 0-1000 SF is incorrect.

Board's Decision in Respect of Issue #2 - Reasons

The Board notes that it has been supplied with minimal information regarding comparable leases from other strip centres similar to the subject specifically regarding this issue. While the Complainant has selected and provided a couple of pages from two apparently very large rent rolls, the Board considers that this is insufficient, as was the data in this limited information insufficient, to persuade it that \$23 per SF is incorrect.

In addition, the Board notes that at least one of the leases referenced by the Complainant in the Northgate Village rent roll excerpt does not appear to be a completely "arms length" lease and therefore its value to this argument is suspect. Moreover, the Board agrees with the

Respondent that the subject's rent roll shown on page 27 of C-1 is a "site-specific" document and shows "actual" and not "typical" values required in Mass Appraisal.

Therefore, on the whole, and on balance, the Board considers that the Complainant has provided insufficient information to persuade it that at the \$23 per SF rent rate applied to CRU 0-1,000 SF space is incorrect or inequitable.

Issue #3: 'The vacancy rates used to assess the three components of the subject are inequitable when compared to similar properties.'

The Complainant argued that the typical "Vacancy Rate" of 3.75% applied to the subject should be increased to 6.50% based on several properties he considered comparable to the subject. On pages 30 and 31 of C-1 he provided the City's "Non-Residential Properties – Income Approach Valuation" sheet for a Parts Source store at 336, 16 AV NW. He noted that it had been assessed using a vacancy rate of 6.50% as "ground floor retail". On pages 32 and 33 he provided the same City "Valuation" sheet for a Shoppers Drug Mart location at 1323 Centre ST NW. He noted that the vacancy rate for it was also 6.5%.

The Complainant provided on pages 36 and 37, the City's "Non-Residential Properties – Income Approach Valuation" sheet for a large multi-unit retail property identified generally as "Tim Hortons" at 335 - 36 AV NE. The Complainant noted that the predominant (except for one unit) vacancy rate in this complex is 6.25%.

Therefore the Complainant argued that the subject is a similar property to the three he identified, and should be assessed using a 6.25% vacancy rate as well.

The Respondent clarified that both the Parts Source store and the Shoppers Drug Mart locations were not in strip malls but instead are "free-standing" buildings that are assessed quite differently from the subject. Moreover, he noted that the Complainant's third comparable, the multi-unit retail complex at 335 – 36 ST NE, is a very large 228,983 SF ten-building site and is not comparable because it is not a one-building 16,678 SF strip mall like the subject. It too is assessed using different parameters than the subject. He noted that it is also considered, because of age and other factors, to be inferior to the subject and therefore theoretically should, and is, getting less in rents.

The Respondent argued that the Complainant's comparables are not comparable to the subject. Therefore, he suggested, the Complainant has provided insufficient valid information to show that the vacancy rate of 3.75% as applied to the subject is incorrect.

Board's Decision in Respect of Issue #3 - Reasons

The Board is satisfied that the Complainant's comparable properties are not comparable to the subject, given that two are free-standing buildings and the subject is a strip mall.

In addition, the Board accepts that the Complainant's third comparable at 335 – 36 ST NE is a much larger and more complex multi-unit retail property that is not only not comparable to the subject, but is assessed differently than the subject. Thus in the Board's view, the 6.25% vacancy rate attributed to it, is not applicable to the subject.

The Board also noted that the Complainant failed to speak to or demonstrate any increased vacancy rate in the subject itself, or indeed demonstrate any vacancy at all. Consequently the Board is satisfied that the 3.75% vacancy rate applied to the subject is appropriate and represents a reasonable "typical" rate under Mass Appraisal.

Therefore, based on the evidence presented in this hearing the Board is not persuaded that the vacancy rate of 3.75% for the subject is incorrect or inequitable.

Board's Summary Decision:

The Board is persuaded that the upper office rent for the subject should be \$17 per SF and not \$20 per SF as assessed, nor \$11 per SF as requested by the Complainant.

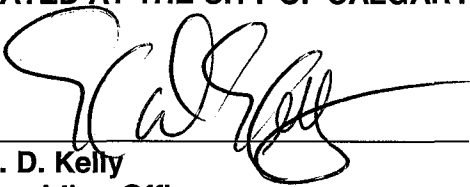
The Board is not persuaded that the 3.75% Vacancy rate, or the \$23 per SF for the CRU 0-1,000 SF space as applied to the Income Approach to Value calculations for the subject, are incorrect.

Therefore the Board considers that the assessment should, when re-calculated, be \$4,550,000.

Board Decision

The assessment is reduced to \$4,550,000.

DATED AT THE CITY OF CALGARY THIS 9 DAY OF September 2011.


K. D. Kelly
Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C-1	Complainant Disclosure Brief
2. C-2	Complainant's Rebuttal Document
3. R-1	Respondent's Disclosure Brief

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.*