

**COMPOSITE
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, (MGA) Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

6914811 Canada Inc. (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

**C. J. Griffin, PRESIDING OFFICER
R. Deschaine, MEMBER
R. Roy, MEMBER**

This is a complaint to the *Composite Assessment Review Board* (CARB) 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: 200383438

LOCATION ADDRESS: 20 Heritage Meadows Way SE

HEARING NUMBER: 63967

ASSESSMENT: \$24,830,000.

This complaint was heard on 7th day of October, 2011 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:

- D. Hamilton

Appeared on behalf of the Respondent:

- K. Gardiner

Preliminary Matter(s):

Two Preliminary/Procedural Matters were brought forward for the CARB to consider.

1) The Complainant informed the CARB that he did not have copies of his 3 part mezzanine space brief and, accordingly, he would not be referring to same in his presentation but that he did intend to speak to the issue.

The CARB accepted the proposal as put forth by the Complainant and will not give consideration to the evidence that may be contained within the said document(s).

2) As a matter of expedience both parties requested that all evidence, questions and responses related to the capitalization rate issue be carried forward from Hearing #64235 (CARB 2224-2011-P) which was heard by this same panel of the CARB, with these same parties, on October 5th, 2011.

The CARB agrees with the parties on this matter and all of the appropriate evidence and argument will be carried forward and become applicable to this Hearing.

Property Description:

According to the Assessment Summary Report (Exhibit C-1 pg. 11) and the adjoining assessment calculation sheets (Exhibit C-1 pgs. 12 & 13), the subject property is described as being a retail shopping centre – power with a quality rating of A2. The subject property, a Real Canadian Super Store, is a 173,182 Sq. Ft. property that consists of 151,037 Sq. Ft. main floor retail space, 6,761 Sq. Ft. mezzanine space, 2,066 Sq. Ft. of office space, 6,853 Sq. Ft. of recreational space, a pad space of 6,464 Sq. Ft. and a gas bar. The property was constructed in 2007 and the underlying site is 29.34 acres in size.

The property has been assessed through application of the Income Approach with the following in-puts:

Big Box	100,000+ Sq. Ft.	\$10/Sq. Ft.
Non-retail mezzanine space		\$ 1/Sq. Ft.
Office space		\$26/Sq. Ft.
Pad space 6,001 – 14,000 Sq. Ft.		\$24/Sq. Ft.
Recreational space		\$12/Sq. Ft.
Gas Bar		\$45,000.
Vacancy Rate		1%
Operating Costs		\$ 9/Sq. Ft.
Non Recoverable Allowance		1% of Effective Net Income
Capitalization Rate		7.25%

Issues:

While there are a number of interrelated issues attached to the Assessment Review Board Complaint form, the Complainant indicated at the Hearing that the issues to be considered by the CARB are reduced to:

1. The assessed main floor retail rental rate of \$10/Sq. Ft. is not equitable and should be lowered to \$8/Sq. Ft.

2. The office and recreational space should be assessed as mezzanine space at a rate of \$1/Sq. Ft.
3. The assessed capitalization rate of 7.25% is too low and should be increased to 7.75%.

Complainant's Requested Value: \$ 17,790,000. (revised at the Hearing)

Party Positions:

Complainant's Position

With regard to the assessed Big Box space the Complainant indicated to the CARB that the subject property is owner occupied; therefore, there is no lease data pertaining specifically to the subject property. The Complainant contends that the rental rate applied by the Assessor is not equitable to other Calgary located Power Centres. The Complainant is requesting a rental rate of \$8/Sq. Ft. be applied as opposed to the assessed rate of \$10/Sq. Ft. In support of the requested rate the Complainant introduced (Exhibit C-1 pg. 89) their *Retail Anchor Space >100,001 Sq. Ft.* wherein the Complainant has provided four comparable leases dealing with retail space of greater than 100,000 Sq. Ft. The four leases relate to properties ranging from 112,488 Sq. Ft. to 158,022 Sq. Ft. The lease commencement dates range from Sept. '97 to Jan. '04. Three of the properties are free standing retail stores (2 x Wal-Mart and 1 x Zellers) while the fourth is an attached Wal-Mart store but which has no internal access to or from the mall, it has outside access only. The face lease rates range from \$6.85/Sq. Ft. to \$10/Sq. Ft. and indicate a mean of \$8.08/Sq. Ft. and a median of \$7.74/Sq. Ft. The Complainant produced (Exhibit C-1 pgs. 93 – 150 and Exhibit C-2 pgs. 151 - 171) two of the leases relating to the Wal-Mart stores located at 901 – 64 Ave. NE and 8888 Country Hills Blvd. NW.

Insofar as the mezzanine space is concerned, the Complainant introduced (Exhibit C-1 pg. 27) a copy of a letter from the property owner that indicates that the mezzanine space in question does not generate rent per se. The letter states:

"As you are aware several of our locations within the City of Calgary have concession or licensing agreements in place on the mezzanine floors, for example 'Goodlife Fitness and Medical Clinics'.

Any revenue attributed to these spaces and listed in our Assessment Request for Information are purely gross amounts which include amounts for goods and services and which are completely unrelated to an interest in real estate."

The Complainant also pointed out to the CARB that the subject mezzanine space was only accessible from the interior of the store and it does not represent typical mezzanine office space as a result. Accordingly the Complainant contends that the space in question should be treated as storage space and should be assessed with a rate of \$1/Sq. Ft. The Complainant produced (Exhibit C-1 pgs. 29 – 43) photographs and assessment details pertaining to four (4) equity comparables, all of which have 'Non-Retail Mezzanine Space' that has been assessed at a rate of \$1/Sq. Ft.

In terms of the office space, the Complainant noted that the same data referred to above (Exhibit C-1 pgs. 29 – 43) also show the Assessor having applied assessed rental rates of \$15/Sq. Ft., \$18/Sq. Ft. and \$20/Sq. Ft. The Complainant provided (Exhibit C-1 pgs. 48 – 57) four (4) additional examples of equity comparables where the assessed office rental rate is

either \$15/Sq. Ft. or \$18/Sq. Ft. Based upon this information the Complainant maintains that equity has not been achieved as the subject is assessed with an office rate of \$26/Sq. Ft. and the recreational space at \$12/Sq. Ft. (the 6,761 Sq. Ft. mezzanine space is assessed at a rate of \$1/Sq. Ft.).

With regard to the issue of the assessed capitalization rate, 7.25%, versus the requested capitalization rate of 7.75%, the reader is referred to CARB 2224-2011-P as that Hearing heard exactly the same evidence and argument, from both parties, and is applicable to this Hearing.

Respondent's Position

In response to the Complainant's request for an \$8/Sq. Ft. main floor assessed rental rate, the Assessor introduced (Exhibit R-1 pg. 118) five (5) lease comparables from the next lowest property size category of Big Box 50,001 to 100,000 Sq. Ft. which indicate a median rate of \$14.50/Sq. Ft. while the subject, being larger, has an assessed rate of \$10/Sq. Ft. The importance of the foregoing is, according to the Assessor, that it shows that a hierarchy of rental rates is employed by the Assessor. The Respondent also introduced (Exhibit R-1 pgs. 119 – 120) thirty-two (32) equity comparables of Big Box stores greater than 100,000 Sq. ft. in size that have all been assessed at a rate of \$10/Sq. Ft. It should be noted that this list of 32 properties includes nine (9) Superstores, in addition to the subject, ranging in size from 115,675 Sq. ft. to 168,796 Sq. Ft. The size range of these other equity comparables, excluding the subject, is 100,874 Sq. ft. to 182,597 Sq. Ft.

In addition to the foregoing the Respondent also provided (Exhibit R-1 pgs. 134>) copies of several MGB, CARB and/or LARB Decisions dealing with some or all of the issues brought forward in this complaint.

It should be noted that the Assessor did not provide any evidence dealing directly with the matter of an applicable rental rate for mezzanine space.

Board's Decision:

The assessment is **confirmed** at: **\$24,830,000.**

Decision Reasons:

With regard to the matter of the assessed main floor rental rate, the comparable lease evidence presented by the Complainant is somewhat compelling as it does relate to properties in the same size category as the subject property; however, the leases are quite dated. The CARB notes that the Respondent did not provide any lease comparables to support their assessed Big Box rental rate other than equity comparables. In a matter such as this the CARB finds equity comparables to be of some assistance as most of the comparables presented are in the same size range as the subject and also because there are nine (9) other Superstores included. It is the latter factor that the CARB found to be most convincing. In the judgment of the CARB equity would not be maintained if one Superstore were assessed at a rental rate that is inconsistent with the other Superstores in the city. In consideration of the foregoing the CARB is of the judgment that the assessed rental rate of \$10/Sq. Ft. for this Big Box space is appropriate.

With regard to the mezzanine space the CARB notes that neither party provided any

With regard to the mezzanine space the CARB notes that neither party provided any photographs of the space in question and same would have been helpful to the CARB. In reference to the letter (Exhibit C-1 pg. 27) the CARB is of the judgment that, in this case, the letter is of little importance as it is the income that the space is deemed capable of producing that is the issue, not the matter of tenure. The CARB does note that the Assessor has applied a rental rate of \$1/Sq. Ft. to 6,761 Sq. Ft. of the mezzanine space in question; thus, it is only the rental rates applied to the 6,853 Sq. Ft. of recreational space and the 2,066 Sq. Ft. of office space that is being questioned by the Complainant. The CARB notes that neither party introduced any evidence pertaining to recreational space lease rates. It is the responsibility of the Complainant to produce evidence to convince the CARB that an alteration to the assessed rental rate(s), and thus the total assessed value of the property, is warranted. Lacking any such evidence the CARB upholds the applied \$12/Sq. Ft. rate. The applied rental rate for the office area, at \$26/Sq. Ft., does not appear to be equitable with the assessed office space in competing and similar properties. Based upon the evidence submitted, the CARB sees no particular reason as to why the office space in the subject property should be assessed at a rate that is different to the rate applied to similar space in similar properties. The Complainant provided (Exhibit C-1 pgs. 29 – 57) nine comparable properties wherein the assessed office rate is \$15/Sq. Ft. on five (5) occasions, \$18/Sq. Ft. on two (2) occasions and \$20/Sq. Ft. on two (2) occasions. Following the reasoning that typical would relate to that rate used the most often, the CARB is of the judgment that \$15/Sq. Ft. is appropriate for the subject office space. Having made that determination however, the CARB notes that applying a rate of \$15/Sq. Ft. to the subject's 2,066 Sq. Ft. of office space makes only a minor difference to the overall assessed value (1.21%) and altering the assessment by such an insignificant amount would amount to little more than tinkering with the assessment.

Insofar as the matter of other CARB decisions is concerned, the CARB does not find same to be a basis for making a decision in the case before us. Both parties should be aware that previous decisions are not a determinant for a current decision unless those decisions dealt with exactly the same evidence, argument and fact scenario and even then one panel of the CARB may have a different interpretation of some or all of the data than another panel. In short, previous CARB decisions do not serve well as a reason to confirm or alter an assessment.

With regard to the capitalization rate issue, the reader is respectfully referred to CARB Decision 2224-2011-P which provides the CARB's decision on this matter based upon the same evidence and argument put forth by these same two parties.

DATED AT THE CITY OF CALGARY THIS 10 DAY OF November 2011.


C.J. Griffin,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Disclosure
2. R1	Respondent's 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.*