

**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:

Les Galleries D'Anjou Limitee (as represented by Altus Group Ltd.), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

C. J. Griffin, PRESIDING OFFICER

D. Cochrane, MEMBER

J. Rankin, 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: 038147302

LOCATION ADDRESS: 3412 – 49 Street NW

HEARING NUMBER: 60984

ASSESSMENT: \$12,390,000.

This complaint was heard on 21st day of September, 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:

- A. Izard

Appeared on behalf of the Respondent:

- D. Zhao

Preliminary Matters:

At the outset of the Hearing the Complainant introduced a copy of the *Globexx Properties Ltd. Memorandum of Decision* (2011 ABQB 464) by Madame Justice D. L. Shelly which pertains to an Application for Leave to Appeal (Globexx). The Respondent was unaware that same was to be introduced and requested an opportunity to introduce two (2) pieces of evidence relating to the subject property that pertain to the said decision. The Complainant objected to the introduction of these two (2) pieces of evidence on the basis that same constituted new evidence that had not been properly exchanged in accordance with Alberta Regulation 310/2009.

Board Decision – Preliminary Matter(s):

The CARB made the determination that, in keeping with the tenets of Natural Justice and Fairness and to avoid the potential of a party to the Hearing feeling ‘ambushed’, it would allow the Respondent to introduce the aforementioned two (2) pieces of evidence (Exhibits R-2 & R-3).

Property Description:

The subject property is a free standing 50,153 Sq. Ft., two tenant retail building that is assessed as being a part of a regional shopping centre (Market Mall). The building, which was constructed in 1995, sits on a 3.84 acre site

Issues:

There are a number of interrelated issues outlined on the Assessment Review Board Complaint form; however, at the Hearing the Complainant reduced the issues to be considered by the CARB to:

1. The subject has been improperly classified, for assessment purposes, as being a part of the Market Mall; however, it is the contention of the Complainant that the subject should be considered as a *Retail Junior Box Store Premise*.
2. Having been classified, for assessment purposes, as being a part of a regional shopping centre, the subject has been assigned a capitalization rate that is too low and not representative of that capitalization rate applied to similar properties.

Complainant's Requested Value: \$10,210,000. (one of two put forth by the Complainant)

Party Positions:**Complainant's Position**

The Complainant contends that the subject property is, for assessment purposes, a free standing *Jr. Big Box Store* that sits on a pad site adjacent to the regional shopping centre (Market Mall). The subject has a unique legal description and it has, in the past, been sold independently from the mall. If the property were assessed as the Complainant requests the applied capitalization rate would be 7.50% as opposed to the applied 6.50%. Additionally the subject should have a vacancy allocation of 6.5% as opposed to the applied 1%. Application of these factors in the income approach, being the method of valuation applied by the Assessor, results in the Complainant's requested \$10,210,000 assessed value.

In support for their request, the Complainant introduced (Exhibit C-1 pgs. 54 – 58) examples of two similar free standing retail properties located on pad sites adjacent to a regional shopping centre together with the Assessor's income approach for each wherein a capitalization rate of 7.50% has been applied. The first example (Exhibit C-1 pg. 54) is a 34,960 Sq. Ft. Future Shop store that is located on a pad site adjacent to a regional shopping centre (Sunridge Mall) and which was sold, together with a free standing Petland store, independent from the mall. There is a notation on the sales summary sheet stating that this Future Shop property has been sold three times in the past three years. The assessment of this property (Exhibit C-1 pg. 55) clearly shows the Assessor has applied a 7.50% capitalization rate in application of the income approach used to value the property for assessment purposes. The Petland store which was included in the aforementioned sale, is also (Exhibit C-1 pg. 109) assessed using a 7.50% capitalization rate. The second example put forth by the Complainant relates to the Cheesecake Cafe property that sits on a pad site adjacent to the Northland Mall. The assessment for this property (Exhibit C-1 pg. 58) also shows the Assessor has applied a capitalization rate of 7.50% to derive the assessed value for the property. A further example of a free standing retail property on a pad site adjacent to a mall is (Exhibit C-1 pgs. 110 – 115) the former A&B Sound site located on a pad site adjacent to the Sunridge Mall. This property has also been assessed with an applied capitalization rate of 7.50%. The Complainant produced (Exhibit C-1 pgs. 79 – 87) two additional examples of properties located on shopping centre pad sites that have been assessed as free standing properties not associated with the mall. The examples relate to an *A & W Restaurant* located at 5120 Shaganappi Trail NW and a *McDonald's Restaurant* located at 5221 Northland Dr. NW, the latter of which has, at this point, been assessed through application of the income approach using a 7.50% capitalization rate.

Respondent's Position

The Assessor maintains that the subject property, while separately titled, is indeed a part of the regional shopping centre (Market Mall) as it lacks access by itself and must function with Market Mall to allow traffic flow (Exhibit R-1 pg. 3). In support of this position, the Assessor introduced (Exhibit R-1 pg. 24) an overhead photograph of the subject property indicating no private access to the property beyond that provided by the Market Mall development. The Respondent also provided the CARB with (Exhibit R-1 pg. 33) an amended assessment for the McDonald's Restaurant property referred to by the Complainant; however, as that property is under appeal the amended assessment has not yet been applied. The Respondent also provided for the CARB to consider several Municipal Government Board (MGB) and/or CARB decisions (Exhibit R-1 pgs. 84 – 149) deemed to relate to matters similar to those of this appeal.

Complainant Rebuttal:

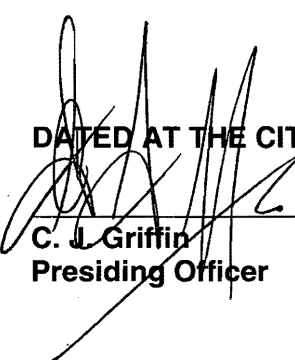
The Complainant introduced (Exhibit C-2) information relating to rental rates and pad site that is available for lease for a rate of \$8/Sq. Ft. The pad is adjacent to Sunridge Mall. Additionally the Complainant introduced (Exhibit C-3) a copy of a Land Use Map which shows no road allowance adjacent to the *McDonald's Restaurant* site which would provide for private access/egress to and from that site.

Board's Decision:

The assessment is **reduced** to: **\$10,210,000.**

Decision Reasons:

The CARB is of the judgment that the subject property, having a separate and unique legal description and having been sold independently of the regional shopping centre (Market Mall) is indeed a free standing independent property. While the Assessor maintains that the subject is a part of the aforementioned mall, they provided no evidence in the way of leases, right-of-way agreements or any other documentation that would support this contention. In the final analysis the CARB is more convinced by the evidence of the Complainant that the subject property is indeed free standing and it should be assessed as such.

 DATED AT THE CITY OF CALGARY THIS 3rd DAY OF OCTOBER 2011.

C. J. Griffin
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. C3	Complainant Rebuttal (Land Use Map)
4. R1	Respondent Disclosure
5. R2	Respondent's Income Approach for Market Mall (referring to <i>Globexx</i>)
6. R3	Respondent screen shots for Market Mall assessment for past 3 years showing no change in classification. (<i>Globexx</i>)

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.*