

**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:

KEYNOTE DEVELOPMENT CORPORATION, COMPLAINANT
(Represented by Altus Group Ltd.)

and

The City Of Calgary, RESPONDENT

before:

Board Chair P. COLGATE
Board Member E. BRUTON
Board Member B. JERCHEL

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: 201499597

LOCATION ADDRESS: 1100 1 STREET SE

FILE NUMBER: 68203

ASSESSMENT: \$106,420,000.00

This complaint was heard on 25th 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:

- D. Genereux, Altus Group Ltd. – Representing Keynote Development Corporation

Appeared on behalf of the Respondent:

- E. Currie – 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] The Complainant requested the evidence and discussion from the prior hearing, File Number 68120, Roll Number 201098431, with respect to the office rental rate be brought forward to this hearing. The Complainant submitted the evidence would be the same as in the previous case and for efficiency it would not be necessary to repeat the presentation. There was no objection from the Respondent. The Board accepted the request.

[3] As there were no further jurisdictional or procedural matters, the Board proceeded to hear the merits of the complaint.

Property Description:

[4] The subject parcel, known as the IBM Corporate Park, is an improved parcel located at 1100 1 Street SE in the Beltline community. Situated on the 1.63 acre site is a single high-rise office tower, constructed in 2009. The tower, classified as Class AA quality, 280,460 square feet of leasable area, comprised of 2,968 square feet of bank space, 2,033 square feet of recreational space, 241,556 square feet of office space, and 33,903 square feet of supermarket space. There are also 356 assessed parking stalls.

[5] The subject property is assessed for \$106,420,000.00, using the Income Approach to valuation, with the following rates:

<u>Space</u>	<u>Rate</u>
Parking Stalls	\$4,200 per stall
Bank Space	\$42.00 per square foot
Recreational Space	\$9.00 per square foot
Office Space	\$24.00 per square foot
Supermarket Space	\$23.00 per square foot

[6] The Land Use designation is CC-X or City Centre Mixed Use.

Issues:

[7] Three issues were presented for the Board's consideration:

#1 Should the rental rate for office space be reduced to \$22.00 per square foot from the currently assessed office rental rate of \$24.00 per square foot.?

#2 Should the rental rate for the supermarket space be reduced to \$17.00 per square foot from the currently assessed rental rate of \$23.00 per square foot?

#3 Should a total of 120 parking stalls be removed from the assessment due to a lease agreement with the Sunterra Market and to make the assessment equitable with other supermarkets?

Complainant's Requested Value: \$89,840,000.00.

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 and higher court 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 1: What is the correct rental rate for the office component of the assessment?

N.B. This Issue has been brought forward from the decision for File 68120, Roll Number 201098431, as requested by the Complainant and agreed to by the Respondent. Page references are for the subject file.

Complainant's Evidence:

[11] The Complainant requested a reduction in the rental rate for the office area to \$22.00 per square foot based upon the inclusion of a third lease in the Keynote development.

The Complainant presented a copy of a City of Calgary document titled "2012 Beltline Office AA Class Rent Study". (C1, Pg. 41) The document indicated two leases were used to establish the rental rate for Class AA office space.

Roll Number	Name	Address	Lease Area (sq. ft.)	Commencement Date	Term (yrs)	Rate
201499597	Keynote	1100 1 St. SE	44,356	2010/09/01	10	27.00
201499597	Keynote	1100 1 St. SE	6,373	2011/04/01	7	22.00
					Mean	24.50
					Median	24.50
					Weighted Mean	26.38
					Assessed Rate	24.00

[12] The Complainant requested the inclusion of a third lease from the Keynote 2 project, immediately adjacent to the building where the two leases used by the City of Calgary were situated. (C1, Pg. 42) The Complainant argued the third lease for office space, due to its proximity was a valid lease and should be used in the determination of the rental rate. The Complainant showed through photographs the similarity between the two phases of the Keynote development.

[13] Based upon the inclusion of the third lease, the Complainant calculated a revised rental rate for the office space. (C1, Pg. 52)

Roll Number	Name	Address	Lease Area (sq. ft.)	Commencement Date	Term (yrs)	Rate
201499597	Keynote	1100 1 St. SE	44,356	2010/09/01	10	27.00
201499597	Keynote	1100 1 St. SE	6,373	2011/04/01	7	22.00
201499514 (1)	Keynote 2	1100 1 St SE	2,153	2001/03	--	17.00
					Mean	22.00
					Median	22.00
					Corrected Assessed Rate	22.00

((1) R1, Pg 32)

[14] Based upon the 'corrected' rental rate for office space., the Complainant requested a revised assessment of \$118,370,000.00

Respondent's Evidence:

[15] The Respondent submitted that the third lease, from Keystone 2, was actually located in a Class A condominium apartment building that was currently under construction.

[16] The Respondent submitted promotional material, distributed by Balboa Land Investment Inc., which indicated the Keynote Urban village currently contains a 14 storey office tower and a 26 storey residential tower. Currently the second residential tower, with 29 storeys, is under construction and scheduled for completion in the spring of 2013 (R1, Pg. 19-21)

[17] Also submitted were photographs to show the second residential tower under construction and the office tower. (R1, Pg. 22-27)

[18] The Respondent argued the third lease was located in the residential tower under

construction, and through the submission of an Assessment Request For Information, dated 2012/07/25, and showed the commercial spaces within the tower were now vacant due to the construction on the site. (R1, Pg.32-33)

[19] A copy of the City of Calgary 'Non-Residential Properties – Income Approach Valuation' was presented to show office space in a Class A condominium apartment building was assessed at a rental rate of \$16.00 per square foot, but within the Class AA office towers the rental rate was consistent at \$24.00 per square foot. (R1, Pg.28-31)

[20] An equity comparable was submitted, Stampede Station at 131 Macleod Trail SE, an office tower also assessed at a rental rate of \$24.00 per square foot. (R1, Pg. 74-76)

[21] The Respondent testified, that with so few leases available in Class AA office towers, the City of Calgary was conservative in the rental rate set for the valuation. The two leases indicated a mean and median of \$24.50 and a weighted mean of \$26.38; however the Assessment Business Unit selected a conservative rental rate of \$24.00 per square foot.

[22] The Respondent argued the third lease, submitted by the Complainant, was also significantly smaller than the two leases analyzed by the City of Calgary and therefore should not be given the same weight in the analysis.

[23] In summation, the Respondent stated the additional third lease was located in an apartment condominium building; the structure was under construction with a lower quality classification; was smaller than the leases used in the analysis; and was now terminated.

Findings of the Board on Issue 1:

[24] The Board found the addition lease was less than ideal as a lease to determine the rental rates in an office building.

[25] The third lease was for a significantly lower rental rate than those found in the office tower, in the order of a \$5.00 to \$10.00 difference. The Board noted the lease rate of \$17.00 per square foot for the third lease was in line with the rate the City of Calgary had set for office space in a condominium apartment at \$16.00 per square foot.

[26] The third lease was significantly smaller in area than the two leases in the office tower – 2,153 square feet versus 44,356 square feet and 6,373 square feet.

[27] If recognition was to be given the third lease, the Board found the Complainant's approach to the analysis of the three leases only recognized a mean and median result, but did not take into consideration the leased areas. The Board looked at a weighted mean analysis, one the Complainant has argued in other hearings as the only approach to use, and determined the following:

Roll Number	Name	Address	Lease Area (sq. ft.)	Commencement Date	Term (yrs)	Rate
201499597	Keynote	1100 1 St. SE	44,356	2010/09/01	10	27.00
201499597	Keynote	1100 1 St. SE	6,373	2011/04/01	7	22.00
201499514 (1)	Keynote 2	1100 1 St SE	2,153	2001/03	--	17.00
					Mean	22.00
					Median	22.00
					Weighted Mean	25.00

[28] The weighted mean of the three leases more closely supports the current rental rate of \$24.00 than the requested rental rate of \$22.00.

[29] In conclusion, the Board rejects the request of the Complainant to use a rental rate of \$22.00 per square foot for the office space in the subject property.

[30] The Board noted a complete ARFI for the subject property, dated 2011/05/17, and was submitted into evidence, which was not presented by either party in the previous hearing. (R1, Pg. 34-38)

Issue 2: What is the correct rental rate for the supermarket component of the assessment?

Complainant's Evidence:

[31] The complainant argued the correct rental rate for the subject's supermarket component was \$17.00 per square foot, which was in line with the better quality supermarkets.

[32] The Complainant noted the rental rate assigned to the supermarket component of the subject assessment was based upon only one lease in the Beltline community – the supermarket under complaint. This was supported by a City of Calgary document providing the list of supermarkets, their classification and lease information. (C1, Pg. 74-75)

[33] The Complainant argued the 2012 assessment was the first year the City of Calgary had separated the Beltline out of the analysis into its own grouping, which also included the Beltline Safeway and Co-op supermarkets. This was confirmed by the presentation of the 2011 Non-residential Properties – Income Approach Valuation report which showed in previous year the subject was assessed \$17.00 per square foot for the supermarket component. (C1, Pg. 82-83)

[34] The Complainant admitted to the lease of the supermarket space for \$23.50 per square foot, as shown in the Assessment Request for Information (ARFI). (C1, Pg. 67-68) However, the Complainant argues the use of a single lease went against the basic principles of assessment analysis which directed, in numerous publications and guidelines, that more leases are required, on the order of 3 to 15 leases.

[35] Additionally, the Complainant referenced a Court of Appeal for Saskatchewan, 2000 SKCA 84, which stated, "...that use of one sale is not a standard method of determining a market value adjustment. Use of one sale certainly does not allow for statistical testing". (C1, Pg. 61)

[36] The Complainant raised the issue of tenant inducements, in that the owner was providing a \$60.00 adjustment over the 15 year term or \$4.00 per square foot annually. The Complainant originally argued this would result in an adjusted rent of \$19.50 per square foot.

[37] However, during questioning the Complainant stated this was not the basis for the requested rate of \$17.00 per square foot; it was equity with other Class A supermarkets in The City of Calgary.

Respondent's Evidence:

[38] The Respondent entered the complete ARFI pertaining to the subject property at 1100 1 Street SE., dated 2011/05/17, which showed the lease for the Sunterra Market was signed to commence May 18, 2010 at an annual rental rate of \$23.50 per square foot. (R1, Pg. 34-38)

[39] The Respondent states the Sunterra lease was the only lease for groceries stores in the Beltline and was the basis for the three grocery stores in the district being assessed at the rental rate of \$23.00 per square foot. This was shown in the table "Beltline Grocery Stores" which showed the equity between the three stores – Sunterra Market, Safeway and Co-op Midtown. (R1, Pg. 40)

[40] The Respondent made an effort to show the average lease rental rate for the supermarket was \$29.50 per square foot over the sixteen year term of the lease. (R1, Pg. 41-42)

Complainant's Rebuttal:

[41] The rebuttal to the Respondent's averaging of the future leases of the Sunterra supermarket, showed, through the application of "the present worth of total future revenue", that the present rental rate per square foot was \$15.37. (C2, Pg 1-4)

Findings of the Board on Issue 2:

[42] The Board agreed with the Complainant that the single lease for Sunterra Market at \$23.50 per square foot is insufficient to create a new market zone for supermarkets and establish the typical rental rate within the methodology of mass appraisal.

[43] The Board, upon review of the submitted evidence, found the lease rental rate of \$23.50 per square foot for Sunterra Market falls within the range of \$8.40 to \$26.45 set for the Class A supermarkets, currently assessed at a rental rate of \$17.00 per square foot.

[44] The Board placed no weight on the Respondent's averaging of the step-up leases for the Sunterra Market. The mandate of the assessment is to base the rental rates on typical market value as of July 1 of the valuation year, not on the averaging of future rental rates. Accordingly, the Board notes the rebuttal document but does not consider it a factor in the deliberation or the issue.

[45] The Board accepts the Complainant's request for a reduction to the rental rate for the supermarket to \$17.00 per square foot.

Issue 3: Reduce the number of parking stalls to reflect equity and lease agreement.

Complainant's Evidence:

[46] The Complainant argued that due to a lease agreement between Keynote Development Corporation (Keynote) and the Sunterra Keynote Market Inc. (Sunterra), the assessment for 120 stalls should be removed from the assessment.

[47] A copy of a portion of the retail lease between Keynote and Sunterra was introduced into evidence. (C1,, Pg.93-95)

[48] The Complainant referenced Section 5(a) and 5(c) of the lease, which set out the terms of the parking agreement. In Section 5(a), "the Tenant (Sunterra) shall have the right of use, during the Term, four (4) reserved parking spaces (the Parking Spaces) in the portion of the parking facilities allocated by the Landlord for staff parking". Section 5(c) further states, "fourteen (14) non-exclusive surface metered parking spaces (the Surface Stalls), a maximum of sixty-nine (69) non-exclusive parking spaces in the Parking Facilities (the Parking Area 1) ...

and a further maximum of thirty-three (33) non-exclusive parking stalls in the Parking Facilities (the Parking Area 2) would be provided to the Sunterra Market.

[49] The Complainant noted under Section 5(d) of the lease "the Landlord agrees to reimburse the Tenant for all parking charges paid by customers of the Tenant." The reimbursement was set a rate of a maximum of thirty (30) minutes for Surface Stalls, forty (40) minutes for Parking Areas 1 and 2, for each customer

[50] The Complainant presented a comparison of the parking ratios for the tenant, Sunterra Market, with three supermarkets in the vicinity.

Address	Property Occupant	Store Size	Parking Stalls	Parking Ratio (Square Feet of Building Area per Stall)	Community
813 11 Ave SW	Safeway	38,808	143	271	Beltline
1130 11 Ave SW	Co-op Market	48,073	163	295	Beltline
410 10 St NW	Safeway	36,084	140	258	Sunnyside
			Median	271	
Subject Tenant					
11001 St SE	Sunterra Market (Only)	33,903	120 (allocated under lease)	283	Beltline

(C1, Pg. 96)

[51] The Complainant stated the ratio for the Sunterra Market was in line with that of the three supermarkets in the study. The Complainant argued the 120 "must be removed from the subject assessment for the assessment to be equitable with other properties" (C1, Pg. 96)

[52] The Complainant submitted diagrams and photographs of the supermarkets used in the parking ratio study to show that in no case were parking stalls being assessed to the supermarket. Only in the case of Co-op Market was a separately titled parcel, used for parking, assessed for \$1000.00. (C1, Pg. 98-110)

[53] An excerpt from the Land Use Bylaw – 1P2007, Part 11 –Division 4: General Rules was submitted with a reference to 3(d) which stated the rule for the number of stalls "for all other uses is 3.5 stalls per 100.0 square meters of gross usable floor area. The Complainant argues this would equate to one stall per 307 square feet, greater than the subject supermarket component which was at one stall for 283 square feet.

Respondent's Evidence:

[54] The Respondent, referencing Retail Lease submitted by the Complainant, made note that in Section 5(c) the wording for the 116 parking stall use is "non-exclusive". The Respondent interpreted this wording to mean that the parking stalls were available for supermarket parking only if they were vacant. This is supported by the introduction to the section which states, "The Landlord shall make available to customers of tenants of the retail Premises, and visitors of the Office Tower and Residential Premises, for a fee but at no cost to the Tenant..." The Respondent was of the opinion the 116 stalls were not even assigned to the Sunterra Market, but were only being made available for parking for its customers, in competition with the other retail and office tenants and the residential premises. (R1, Pg. 46)

[55] Further the Respondent noted that the thirty-three stalls in Parking area 2 were available only after 6:00 pm and only if the Landlord did not required the stalls for hockey games or concerts at the Saddledome or any other event at the discretion of the Landlord.

[56] The Respondent noted in section 5(a) of the lease that for the four reserve stalls "the tenant agrees from and after the Commencement Date to pay to the Landlord for the use of the Parking Spaces at the prevailing market rates." The Respondent submitted the stalls were in the possession and control of the owner, Keynote Development Inc., and should be assessed spaces as parking for the complex.

[57] The Respondent submitted through verbal testimony and photographs the parking area was operated and controlled by impark, not the owner. (R1, Pg. 51-72)

[58] The Respondent further noted the reimbursement was for only a limited time and only for the customers of the Sunterra and Starbucks and only for a maximum time of thirty or forty minutes, regardless of the actual time the stall was occupied.

Findings of the Board on Issue 3:

[59] The Complainant provided the Board with only a portion of the lease between Keynote Development Corporation and Sunterra Keynote Market Inc. This selection of portions does not convince the Board the sections noted were exclusive to Sunterra Market when a reference is made about the parking in Section 5(c) to "make available to customers of tenants of the Retail Premises, and visitors of tenants of the Office Tower and Residential Premises". There is no where, in the portion selected, specific reference to an agreement for the 120 noted stalls being for the use of Sunterra only, rather it seems a general statement that would be found in the lease for any tenant in the complex.

[60] The Board found the 120 stalls request to be removed from the assessment are not exclusive to the supermarket, but from the evidence submitted are located in parking areas that would be described as 'scramble' parking, serving any visitor to the site. When not occupied by customers of Sunterra Market, then the stalls are in use by customers who pay the full parking fee.

[61] Additionally, there were time restrictions on the use of the stalls, i.e. after 6:00 pm, or could be withheld by the owner for other activities.

[62] Based upon the evidence, the Board rejects the Complainant's request to remove 120 parking stalls from the assessment of the complex.

Board's Decision:

[63] Based upon the reasons given, the Board reduces the assessment at \$103,470,000.00.

DATED AT THE CITY OF CALGARY THIS 22nd 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
4.	Decisions of other Boards

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	-Office -Retail -Other Property Type	High Rise – Multi Building -Parking	Income Approach Income Approach	Net Market Rent/Leases Rates -Exemption (due to Lease)