

**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:

***REMINGTON PROPERTIES INC., COMPLAINANT
(Represented by Altus Group)***

and

The CITY OF CALGARY, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member Y. NESRY
Board Member D. POLLARD***

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: 113011993

LOCATION ADDRESS: 70 GLENDEER CIRCLE SE

HEARING NUMBER: 64470

ASSESSMENT: \$14,670,000.00

This complaint was heard on 19 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:

- Andrew Iazard, Altus Group – *Representing Remington Properties Inc.*
- Doug Hamilton, Altus Group – *Representing Remington Properties Inc.*

Appeared on behalf of the Respondent:

- John Wes Ehler – *Representing the City of Calgary*

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties had no objections to the panel representing the Board as constituted to hear the matter. No jurisdictional or procedural matters were raised at the outset of the hearing, and the Board proceeded to hear the merits of the complaint.

Property Description:

The subject property is a retail complex, designated a CM0201 Retail Store – Stand Alone, comprised of three individual structures – an office building of 18,359 square feet, a Junior Big Box store (Sears Home) of 42,740 square feet and a freestanding fast food restaurant (A&W) of 2,199 square feet.

The assessable land area is 4.83 acres or 210.219 square feet with a Land Use Designation of Commercial – Corridor 3.

The structures on the site have been assessed individually using an income approach to valuation, dependent upon their property type – Junior Big Box store, office building and freestanding fast food restaurant.

Issues:

1. What is the correct rate to be applied to the Junior Big Box store?
2. What is the correct rate to be applied to the office building?
3. What is the correct rate to be applied to the fast food restaurant?

Complainant's Requested Value:

\$13,820,000.00 (amended by Complainant during the hearing)

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

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.

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.

Both parties also placed Assessment Review Board Decisions before this Board in support of their positions. While the Board has respect for the Decisions rendered by those tribunals, it is also recognized that those Decisions were made in respect of issues and evidence that may be dissimilar to the evidence before this Board. The Board will therefore not give much weight to those Decisions unless issues and evidence were shown to be timely, relevant and materially identical to the subject complainant.

ISSUE 1: What is the correct rate to be applied to the Junior Big Box store?**Complainant's Evidence:**

The Complainant requested a rate of \$16.00 per square foot be applied to the 42,740 square foot Junior Big Box building, a reduction from the current \$17.00 per square foot.

The complainant submitted a shortened list of the leases used by the City of Calgary by restricting the sizes used in the study to a range of 20,001 to 50,000 square feet. In testimony, the Complainant put forward the argument the range selected was a better representation of the group and produced a better analysis indicative of the market. The Complainant noted in past years there was a distinction made by size with the City of Calgary using ranges of 14,000 to 20,000 square feet and 20,001 to 50,000 square feet. (C1, Pg. 25) Photographs were submitted to show their respective comparability to the subject property.

The calculations of per square foot rates indicate an average lease rate of \$16.64 and a median lease rate of \$16.00. Lease rates ranged from \$12.50 to \$24.00 per square foot.

In summation the Complainant testified the reduced size range resulted in a better coefficient of dispersion at 17.0 than that achieved by the City of Calgary grouping at 23.27, which falls outside the legislated standards.

Respondent's Evidence:

A list of twenty-eight Junior Big Box leases indicated per square foot rates with a mean of \$18.26 and a median of \$17.15 was introduced to support the current rent rate of \$17.00 applied to the subject. The size range used for the analysis was 14,001 to 50,000 square feet. (R1, Pg. 22)

Sixty-two equity comparables of Junior Big Box stores throughout the City of Calgary were presented to show the consistent application of the \$17.00 per square foot rate. (R1, Pg. 23-24)

Findings of the Board

Complainant's Submission:

The Board found there was insufficient evidence presented to support the Complainant's use of a shorted list of leases as supplied by The City of Calgary. The Board notes the presentation by the Complainant with respect to the coefficient of dispersion was not an issue raised in the original evidence or presented as rebuttal evidence so the Board placed no weight on the testimony. Lacking evidence to support the removal of some of the leases to substantiate the requested rate change the Board rejects the argument as presented by the Complainant.

The Board notes the recent Decision CARB 2221/2011-P which dealt with essentially the same issue of assessment rate for Junior Big Box stores. The Board in that Decision confirmed the assessment rate and found the approach employed by the Complainant, Altus Group, was incorrect when it excluded some of the comparable properties in the calculation of the lease rate.

Respondent's Submission:

The Board found the lease information submitted by the Respondent to support the assessment rate applied by the City of Calgary and said rate of \$17.00 has been consistently applied throughout the City.

Base upon the evidence submitted the Board confirms the assessment rate applied to the Junior Big Box store.

ISSUE 2: What is the correct rate to be applied to the office building?

Complainant's Evidence:

The Complainant requested an office rate of \$18.00 per square foot be applied to the subject, a reduction from the current \$20.00 per square foot.

The Complainant presented eight equity comparables in support of the requested office rate of \$18.00. Five leases were assessed for \$15.00 per square foot and three were assessed at \$18.00 per square foot. (C1, Pg. 46-68)

The Complainant submitted to Decisions, ARB 0793/2010-P, CARB 1642/2011-P and ARB 1331/2010-P. (C1, Pg 69-79)

Respondent's Evidence:

Two equity comparables of freestanding office building with assessment rates of \$24.00 per square foot for quality A+ and \$20.00 per square foot for A- were presented. (R1, Pg. 83)

The Respondent testified there was no previous lease information on the subject office building

as it was an owner occupied structure so no leases were in place.

The Respondent submitted a post facto Assessment Request for Information (ARFI), dated September 19, 2011, which showed two new leases in the office building. The first lease, commenced July 1, 2011 is for 2,997 square feet at a lease rate of \$19.00 per square foot (Net) and the second lease commenced March 1, 2011 is for 10,196 square feet at \$23.00 per square foot (Net). (R1, Pg. 84-85)

Findings of the Board

Complainant's Submission:

The Board found a number of the Complainant's comparables were spaces within shopping centres and so not similar to the freestanding office building of the subject property. While the submitted comparables may show support for a lower rate for properties similar to the comparables, the lack of market evidence or leases information for the subject failed to convince the Board that a change to the assessment was warranted.

The Board noted the Complainant submitted no leases information in support of the requested rate reduction for the office space.

Respondent's Submission:

The Respondent's equity comparables, while a very short list, did support the assessment rate set for the office space.

The post facto leases, while not used by the City of Calgary, in their analysis, tend to support the rate established for the subject property.

The Board found insufficient evidence to alter the current assessment rate for the office space.

ISSUE 3: What is the correct rate to be applied to the fast food restaurant?

Complainant's Evidence:

The Complainant requested a fast food restaurant rate of \$30.00 per square foot be applied to the subject, a reduction from the current \$37.00 per square foot.

The Complainant presented ten equity comparables in support of the requested fast food restaurant rate of \$30.00. Seven leases were assessed for \$28.00 per square foot and three were assessed at \$26.00 per square foot. (C1, Pg. 46-68)

Respondent's Evidence:

Nine equity comparables were presented to show an assessment rate of \$37.00 per square foot

applied to freestanding fast food restaurants. (R1, Pg. 96)

The respondent submitted the lease information for the subject which indicates a lease rate of \$36.66 per square foot, commencing October 1, 1998. (R1, Pg. 96)

Findings of the Board

Complainant's Submission:

The Board finds the equity comparables, while appearing to be the same as the subject, are located in shopping centres and are assessed based upon a differing set of criteria by the City of Calgary – specifically leases within shopping centres.

The Board noted the Complainant submitted no leases information in support of the requested rate reduction for the fast food restaurant space.

Respondent's Submission:

The Board takes note of the Respondent's argument that the comparables submitted by the Complainant were located in Neighbourhood, Community and Power Centres and were therefore assessed differently from those located in subject property. However, the Board found the description "Freestanding" tends to be misleading. While the Board appreciates the circumstance of the particular configuration of structures and their different uses for the subject property, the comparables provided do not establish if they are the sole occupant of the site or part of an assembly of buildings as is the case with the subject property. The lease comparables tend to show support for the rate applied to the subject.

The actual lease information is the most compelling evidence presented with respect to the Fast Food Restaurant.

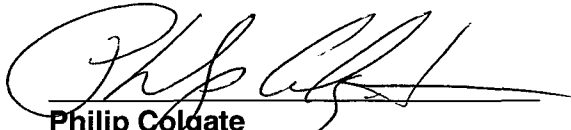
The Board found insufficient evidence from equity arguments to support a change to the assessment rent rate for the Fast Food Restaurant space. Further the assessment rate applied is supported by the current lease for the subject.

Board's Decision:

The Complainant presented to the Board the Principle of Substitution to support their position on the application of reduced assessment rates. It was submitted by the Complainant a party looking to lease a space would look for that space which provided similar qualities for the lowest cost. The Board accepts the Principle of Substitution, but in the market place the person would be looking at actual lease rents not typical assessment rates to determine the cost. The Board found it a far stretch by the Complainant to attempt to apply the Principle in an argument for equity assessment rates. For this argument to be accepted, the Complainant should have presented actual lease information in support of the application. As the Complainant failed to supply sufficient lease information, the argument failed for the Board.

The Board, having found insufficient evidence to support changes to the assessment, confirms the assessment at \$14,670,000.00

DATED AT THE CITY OF CALGARY THIS 16th DAY OF November 2011.


Philip Colgate
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. 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 -Office	-Stand Alone -Stand Alone	-Income Approach -Income Approach	-Net Market Rent/Lease Rate -Net Market Rent/Lease Rate

LEGISLATIVE REQUIREMENTS

MUNICIPAL GOVERNMENT ACT

Chapter M-26

1(1)(n) “market value” means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1

Preparation of Assessments

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

289(2) Each assessment must reflect (a)the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property,

ALBERTA REGULATION 220/2004

Municipal Government Act

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION

1(f) “assessment year” means the year prior to the taxation year;

Part 1

Standards of Assessment

Mass appraisal

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.