

**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:

***AVENIDA PLACE LTD., C/O STRATEGIC GROUP, COMPLAINANT
(Represented by ALTUS GROUP LTD.)***

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: 141119800

LOCATION ADDRESS: 12445 Lake Fraser Drive SE

HEARING NUMBER: 63882

ASSESSMENT: \$24,570,000.00

This complaint was heard on 20 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:

- *Kam Fong, Altus Group Ltd. – Avenida Place Ltd., c/o Strategic Group*

Appeared on behalf of the Respondent:

- *Margaret Byrne - 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 matter was raised at the outset of the hearing.

A procedural matter was raised by the Complainant and Respondent to have the hearings on Roll Numbers 141119800 (File Number 63882), 141122200 (File Number 63883) and 141122309 (File Number 63884) heard together as the majority of the arguments and the evidence was the same for all for properties. Further the parties requested the decision for Roll Number 200259232 (File Number 63890), scheduled for another hearing session, reference the presentation and decisions for the previously listed hearings as the evidence would be the same.

In the interest of efficiency the Board had no objections to the request for a joint hearing and the referencing of the hearing for Roll Number 200259232 to these proceedings.

The Board proceeded to hear the merits of the complaints.

Property Description:

The subject complexes are multi-building, multi-tenant strip retail centres located at 12085, 12101, 12121 and 12445 Lake Fraser Drive SE.

12085 Lake Fraser Drive SE is two retail structures containing 19,798 square feet of developed space. The structures, classified as CM0210 Retail Store – Strip, were constructed in 1999 and rated an A- quality. The property sits on a 1.65 acre parcel zoned Commercial – Community 2.

12101 Lake Fraser Drive SE is retail complex of four buildings containing 31,420 square feet of retail development, including retails space, restaurant dining lounge and fast food restaurant. The structures, classified as CM0210 Retail Store – Strip, were constructed in 1999 and rated an A- quality. The property sits on a 2.97 acre parcel zoned Commercial – Community 2.

12121 Lake Fraser Drive SE is single retail structure containing 11,583 square feet of developed space. The structures, classified as CM0210 Retail Store – Strip, were constructed in 1999 and rated an A- quality. The property sits on a 1.13 acre parcel zoned Commercial – Community 2.

12445 Lake Fraser Drive SE is retail complex of seven buildings containing 90,993 square feet

of retail development, including retail space, automotive service space and a gas bar/car wash operation. The structures, classified as CM0210 Retail Store – Strip, were constructed in 1988 and rated an A- quality. The property sits on a 9.46 acre parcel zoned Commercial – Community 2.

The assessments are based upon an income approach to market value.

Issues:

1. Has the correct vacancy rate been applied to the subject property?
2. Are the subject properties correctly rated as to quality?
3. Have the correct rent rates been applied to the Commercial Retail Units (CRU's)?
4. Has the correct rental rate been applied to the automotive space?

Complainant's Requested Value:

Roll Number 141 11980 0	Requested Assessment - \$22,570,000.00 (Revised at Hearing)
Roll Number 141 12220 0	Requested Assessment - \$8,970,000.00
Roll Number 141 12230 9	Requested Assessment - \$3,120,000.00
Roll Number 200 25923 2	Requested Assessment - \$5,300,000.00

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

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.

The Board reviewed evidence specific to the issues.

ISSUE 1: Has the correct vacancy rate been applied to the subject property?

Complainant's Evidence:

The Complainant requested the vacancy rate be increased to 7.75%

The Complainant submitted a summary page of the 2011 Capitalization Rates, Vacancy Rates and Operating Costs applied by the City of Calgary. (C1, Pg.56) The Complainant noted the tables indicated the SE vacancy rate for strip centres was 7.75%. The address for the subject property is 12445 Lake Fraser Drive **SE**.

The Complainant submitted four examples of properties in the south east quadrant assessed using a 7.75% vacancy rate – 11488 24 Street **SE** in Shepard Industrial area, 5303 68 Avenue **SE** in Great Plains area, 90 Cranleigh Drive **SE** in the Community of Cranston and 3750 Bow Bottom Trail **SE** in the community of Deer Ridge. The properties are all strip centres. (C1, Pg.57)

Respondent's Evidence:

Through testimonial evidence the Respondent explained the subject property was located in the Macleod Trail Market Zone 6, which straddles the dividing line between the Southwest and Southeast quadrants of the City of Calgary. The reason for the market zone is to provide consistency in the valuation process on the two sides of Macleod Trail. Analysis by the City of Calgary indicated the vacancy rate was more closely associated with the Southwest quadrant with a vacancy rate of 6.5%.

The Respondent also submitted a summary page of the 2011 Capitalization Rates, Vacancy Rates and Operating Costs applied by the City of Calgary. The Respondent stated the table is a guideline, but there are exceptions in areas along the line separating quadrants in response to market conditions. (R1, Pg. 69)

Findings of the Board

While the Board can appreciate the confusion created when a document is prepared to present typical, such as the vacancy rate, it must also be accepted there can and will be exceptions to the general rule.

This hearing was an example of the exception to the rule when a market zone is forced to straddle the dividing line between the geographical quadrants of the City of Calgary. The need to create the market zone is to recognize the similarity of properties in an area and apply similar criteria in the development of the assessment. To employ a hard rule of dividing areas by a geographical address would result in identical properties on opposite sides of a street being assessment by differing criteria, resulting in differing assessments. This is not a reality in the market place and fails the mandate of the Municipal Government Act and its Regulations. The Matters Relating to Assessment and Taxation Regulation (MRAC) sets it out as follows:

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.**

The creation of market zones allows the grouping of similar properties, under similar criteria being assessed in a similar manner.

The properties provided by the Complainant, while located in the Southeast quadrant, are not located in the same market zone

The Board confirmed the vacancy rate applied to the subject property.

ISSUE 2: Are the subject properties correctly rated as to quality?

Complainant's Evidence:

The Complainant requested the quality classification for the subject property be reduced to B+ to match a comparable property.

The Complainant presented a comparable property at 380 Canyon Meadows Drive SE, built in the same year as the subject and classified as a B+ quality rating. Photographs and 2011 assessment documents were submitted. (C1, Pg. 58-63) The Complainant contended the similarity in age and design of the comparable supported the requested rental rates as the comparable was assessed at lower rental rates. No lease information on the comparable or the subject complex was submitted by the Complainant.

Respondent's Evidence:

In testimony the Respondent stated the subject property was correctly classified as an A-quality complex. The Respondent submitted signed Assessment Request for Information (ARFI) documents dated March 31, 2011. (R1, Pg. 24-42, 46-55, 61-67) showing the lease rents in the complex supported the rent rates applied by the City of Calgary. No lease information on the comparable was submitted by the Respondent.

The Respondent submitted equity comparables to support the rent rates being applied to the automotive and CRU spaces. (R1, Pg. 70 -73)

Findings of the Board

The Board found the Complainant's argument would have been better served through the presentation of actual lease information on both the subject property and the comparable property. A claim of similarity, without supporting evidence, failed to persuade the Board to the opinion of the Complainant.

The ARFI's clearly indicated the leases support the rent rates applied.

The Complainant has presented insufficient evidence to show the quality rating for the subject complex is incorrect. The quality classification remains A-.

ISSUE 3: Have the correct rent rates been applied to the Commercial Retail Units (CRU's)?

Complainant's Evidence:

The Complainant requested, where applicable, the following changes be applied to the rent rates when calculating the assessment value:

CRU 1,001 to 2,500 square feet – rent rate reduced from \$24.00 to \$23.00 per square foot
CRU 2,501 – 6,000 square feet – rent rate reduced from \$23.00 to \$22.00 per square foot
CRU >6,000 square feet - rent rate reduced from \$22.00 to \$21.00 per square foot.

The Complainant submitted a table to show the calculations to determine the requested rent

rate changes for the three CRU categories. The Complainant's analysis document indicates support for the requested rent rates, based upon averages of the leases provided, of \$23.00 for CRU 0 to 1,000 square feet, \$22.80 for CRU 1,001 to 2,500 square feet and \$ 21.00 for 2,501 to 6,000 square feet. (C1, Pg. 57)

The Complainant attempted to show support for the requested rent rates by providing a comparable property at 380 Canyon Meadows Drive SE. The rates applied to the comparable were \$23.00 for CRU 0 - 1,000 square feet, \$23.00 for CRU 1,001 – 2,500 square feet, \$21.00 for CRU 2,501 – 6,000 square feet, \$20.00 for CRU 6,001 – 14,000 square feet and \$19.00 for office space. (C1, Pg. 23-28)

The Complainant provided no lease evidence to support the requested reductions for the subject property.

Respondent's Evidence:

The Respondent again referenced the signed Assessment Request for Information (ARFI) documents dated March 31, 2011. The Respondent, upon review of the ARFI showed recent leases, provided by the owner, supported the rent rates applied by the City of Calgary for the CRU spaces in the complex.

Findings of the Board

Upon review the Board found the table submitted by the Complainant was flawed and the Board was unable to support the findings of the Complainant. The Board found lease information was incorrectly classified under the column headings, so the calculated averages and means were based on incorrectly classified data. Additionally, four of the lease sizes far exceeded the upper limit of 6,000 square feet designated in the column headings. Based upon the flaws in the analysis, the Board rejects the entire table as unreliable and not supportive of the requested rent rates.

The Board found the ARFI's submitted by the Respondent showed the rent rates applied were reasonable in relation to the actual leases.

The Board confirms the rent rates applied to the subject property.

ISSUE 4: Has the correct rental rate been applied to the automotive space?

Complainant's Evidence:

The Complainant requested the rent rate per square foot be reduced from \$26.00 to \$14.00.

The Complainant submitted copies of The City of Calgary 2011 Business Assessment Comparable Report and a 2011 Business Lease Comparable Report for Automotive Mechanical Repair space. The Assessment Comparable Report indicated an application of a \$14.00 per square foot for the Net Assessment Rental Value (NARV) applied to ten locations. The statistical analysis of five leases indicated a Median value of \$15.23 per square foot, a Mean value of \$15.11 per square foot and a Weighted Mean of \$15.02 per square foot. (C1, Pg. 53 – 54)

The Complainant submitted a portion of City of Calgary ARFI to show current leases in the complex for automotive spaces was \$20.00 and \$15.00 per square foot. (C1, Pg. 55)

Respondent's Evidence:

The Respondent submitted a 2011 Business Assessment Comparable Report which showed two comparable automotive spaces on Macleod Trail being assessed at a rate of \$26.00 per square foot.

Findings of the Board

The Board found the Complainant's submission lacked assurance that the equity comparables were of similar quality and classification. The lease comparables provided did support the requested rent rate and were more in line with the actual lease rates for the automotive spaces.

The Respondents equity comparables showed only the rent rate being applied was also applied to two other locations, but the lack of details with respect to the comparables left the Board questioning the similarity. Photographic evidence and lease data on the comparables may have convinced the Board as to the rate applied. However the ARFI submitted by the Respondent clearly indicated the actual lease rate was far below the rent rate applied by the City of Calgary.

The Board finds the evidence submitted by both parties support a lower rent rate for the subject. The Board sets the rent rate for the automotive space at \$15.00 per square foot and adjusts the assessment accordingly.

Board's Decision:

The Board, based upon its decision with respect to the issues presented, amends the assessment for the subject to \$23,960,000.00

DATED AT THE CITY OF CALGARY THIS 17 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	Strip Plaza	Income Approach	-Net Market Rent/Lease Rates - Vacancy Rate -Equity Comparables

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

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- (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.