

**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:

***A WOESSNER CONSTRUCTION COMPANY LIMITED, 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: 072050008

LOCATION ADDRESS: 4202 17 AVENUE SE

HEARING NUMBER: 64185

ASSESSMENT: \$1,820,000.00

This complaint was heard on 17 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. – Representing A Woessner Construction Co. Ltd.*

Appeared on behalf of the Respondent:

- *Kelly Gardiner - 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 two storey retail property of 15,745 square feet located in the community of Forest Lawn.

Issue:

What are the correct rental rates to be applied to the Commercial Retail Units (CRU's) and office space?

Complainant's Requested Value: \$1,280,000.00

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 issue.

ISSUE: What are the correct rental rates to be applied to the Commercial Rental Units (CRU's) and office space?

Complainant's Evidence:

The Complainant requested changes to the CRU and office rental rates for the subject property as outlined below –

	Current Rental Rate	Requested Rental Rate
CRU 0-1,000 sq. ft.	\$17.00	\$14.00
CRU 1,001-2,500 sq. ft.	\$15.00	\$12.00
Office	\$10.00	\$6.00

The Complainant submitted two sales in support of the requested assessment. (C1, Pg. 23-24) The first sale, located at 4518 17 Avenue SE, sold January 5, 2010 for \$775,000.00 or \$97.85 per square foot. If applied to the subject property it would indicate a value of \$1,540,648.20 (15,745 sq ft X \$97.85). The second sale, located at 5701 17 Avenue SE, sold December 2, 2008 for \$3,000,000.00 or \$110.53 per square foot. If applied to the subject property the value indication would equate to \$1,740,294.80 (15,745 sq ft X \$110.53).

The Complainant submitted lease information from three retail operations located in Forest Lawn – 4019 17 Avenue SE, 4710 17 Avenue SE and 5020 17 Avenue SE and one retail operation located in Forest Heights - 5269 Memorial Drive SE. (C1, Pg. 25-37)

The Board has summarized the lease information provided by the Complainant, as it relates to the requested changes to rent rates, into the following table -

Address	4019 17 Avenue SE	4710 17 Avenue SE	5020 17 Avenue SE	5269 Memorial Drive SE
Community	Forest Lawn	Forest Lawn	Forest Lawn	Forest Heights
Sub-Property Use	CM0210 - Retail Store - Strip	CM0201 Retail Shopping Centre - Neighbourhood	CM0210 – Retail Store - Strip	CM0210 – Retail Store - Strip
CRU 0 – 1,000 square feet	969 sq ft @ \$12.39	570 sq ft @ \$12.50 600 sq ft @ \$13.50 872 sq ft @ \$11.50 AVERAGE - \$12.50		
CRU 1,001 – 2,500 square feet		1528 sq ft @ \$10.00 2247 sq ft @ \$10.50 1671 sq ft @ \$12.00 AVERAGE - \$10.83	1649 sq ft @ 15.00 1176.5 sq ft @ \$9.50 AVERAGE – 12.25	
Office Space				2906 sq ft @ \$4.60 720 sq ft @ \$14.67 980 sq ft @ \$6.00 AVERAGE – \$8.42

Respondent's Evidence:

The Respondent submitted three Income Approach Valuation reports for properties similarly classified as the subject CM1106 – Retail-with Major Office Use. (R1, Pg 22-27)

The first equity comparable, located at 4310 17 Avenue SE, has been assessed using the same rates as currently applied to the subject and having applied the same vacancy rate, capitalization rate, operating costs and non-recoverable rate. The comparable is located in the immediate vicinity as the subject in Forest Lawn.

The second equity comparable, located at 4302 17 Avenue SE, was presented to support the \$10.00 rate applied to office space. The comparable is located in the immediate vicinity as the subject in Forest Lawn.

The third equity comparable, located at 1717 52 Street SE, was presented to support the \$10.00 rate for office space and the \$2.00 rate applied to storage space. The comparable is located, as the subject, in Forest Lawn.

The Respondent presented lease information for similarly classified and located properties - CM1106 – Retail-with Major Office Use – from locations along International Avenue, 17 Avenue SE. (R1, Pg 29).

The Board has summarized the lease information provided by the Respondent, as it relates to the supporting the current rent rates, into the following table -

Roll Number	072050008	076051200	076051408	072047954
Community	Forest Lawn	Forest Lawn	Forest Lawn	Forest Heights
Sub-Property Use	CM1106 – Retail-with Major Office Use	CM1106 – Retail-with Major Office Use	CM1106 – Retail-with Major Office Use	CM1106 – Retail-with Major Office Use
CRU 0 – 1,000 square feet	700 sq ft @ \$14.00 (Net Lease)		747 sq ft @ \$23.95 (Gross Lease)	
CRU 1,001 – 2,500 square feet		1250 sq ft @ 31.24 (Gross Lease) 1800 sq ft @ 35.28 (Gross Lease)	1246 sq ft @ \$16.05 (Net Lease)	
Office Space		532 sq ft @ \$9.70 (Net Lease) 479 sq ft @ \$17.50 (Gross Lease)	570 sq ft @ \$18.00 (Gross Lease)	593 sq ft @ \$18.21 (Gross Lease)

The Respondent challenged the Complainant's use of the 4518 17 Avenue SE sale as it involved the vendor financing of the sale. A copy of RealNet report was submitted as evidence, (R1, Pg. 41-43)

The Respondent challenged the lease information submitted by the Complainant as the properties were classified as strip retail centres and a neighbourhood centre, unlike the subject classification as retail with major office.

The last challenge raised by the Respondent was the use of lease information from the property at 5269 Memorial Drive SE. The Respondent testified the Assessment Request for Information had not been returned by the owners and therefore under MRAC 5(1)(3) the Board must not hear the evidence.

Findings of the Board

Complainant's Submission:

The Board found the sales submitted, while supporting the requested assessment, were not without questions. The sale at 4518 17 Avenue SE, based upon the Respondent's information, was vendor finance and the vendor take back of \$675,000. Also the age of the building, constructed in around 1959, is another factor to be considered as the property is significantly older than the subject. The Complainant provided no adjustments to bring the sales in line with the subject.

The Board found the leases submitted by the Complainant supported the requested reduction in rent rates for the CRU spaces. The lease evidence submitted did not support the request for office space to be reduced to \$6.00 per square foot.

Respondent's Submission:

The lease information provided by the Respondent contained a high percentage of leases classified as Gross Leases. The Respondent failed to adequately show the relationship between the Gross Leases rates and the rent rate applied to the subject and similar properties. The wide difference between the Net Leases and Gross Leases, up to \$15.00 for retail space and \$8.00 for office space, left the Board with no choice but to ignore the Gross Leases submitted by the Respondent. As a result the Board is left with only three leases from the Respondent's submission - CRU 0 -1,000 Square feet, a lease at \$14.00 per square foot, CRU 1,001 – 2,500 square feet, a lease at \$16.05 per square foot and office, a lease at \$9.70 per square foot.

The Board found the Respondent's request to challenge the introduction of evidence under MRAC 5(1)(3) is invalid. The misquoted section, 5(3), of the Matters Relating to Assessment Complainants Regulation (MRAC) applies to hearings before the Local Assessment Review Board (LARB). The correct section is MRAC 9(3). The Board, after reviewing the Regulation, found the intent of the section is in reference to information pertaining to the property under complaint and not to the exclusion of comparable properties. A complainant is not privy to the correspondence between a property owner and The City of Calgary and as such is unaware what has transpired, unlike the owner of a property who chooses to ignore a request for information. The Board allowed the lease information to be entered as evidence.

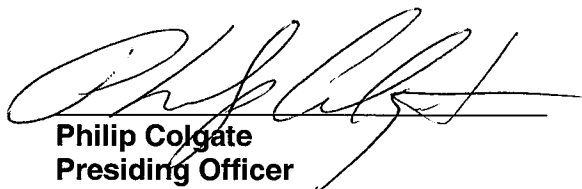
Board's Decision:

The Board found there was sufficient evidence to adjust the rent rates applied to the CRU spaces. The rent rate for office space is confirmed.

The decision of the Board is to adjust the rate for CRU – 0 - 1,000 square feet spaces to \$14.00 and for CRU – 1,001 – 2,500 square foot spaces to 12.00 per square foot. The office space rent rate is confirmed at \$10.00 per square foot.

The Board reduces the assessment to \$1,600,000.00.

DATED AT THE CITY OF CALGARY THIS 14 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

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.