

**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:

Mountain Development Corp. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER

J. O'Hearn, MEMBER

B. Jerchel, MEMBER

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:	104144290
LOCATION ADDRESS:	12 Richard Way SW
HEARING NUMBER:	63872
ASSESSMENT:	\$11,220,000

This complaint was heard on 18th day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Ave. NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *Mr. B. Neeson, Altus Group LTD.*

Appeared on behalf of the Respondent:

- *Mr. M. Ryan Assessor, City of Calgary*

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

None

Property Description:

The subject is a year 2000 vintage, "A2" quality, 6-building retail strip mall of 36,072 square feet (SF) constructed on 54,467 SF (1.25 acres) of land at 12 Richard Way SW adjacent to and south of Mount Royal University. It has three distinct Commercial Retail Unit (CRU) size categories, including one pad site of 1,001 to 2,500 SF – all valued from \$25 per SF to \$27 per SF. The assessment for the subject, based on an Income Approach to Value calculation, is \$11,220,000.

Issue:

1. The typical rent rates used to assess the subject are incorrect.

Complainant's Requested Value: \$10,080,000, or alternatively \$10,150,000.

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

Issue #1 : "The typical rent rates used to assess the subject are incorrect."

Complainant's Position – Issue #1

The Complainant presented his Brief C-1 and provided the City's "2011 Property Assessment Notice", and, the City's "Assessment Summary Report" for the subject. He also provided the City's "Non-Residential Properties – Income Approach Valuation for the site. He clarified that the only issues before the Board are the typical rent valuations applied to each of the three demised spaces in the subject.

The Complainant argued that for retail spaces 0 – 1,000 SF in area the City used \$27 per SF and it should be \$22 per SF. For retail spaces 1,001 – 2,500 SF the City used \$26 per SF and it should be \$22 per SF. For retail spaces 2,501 – 6,000 SF the value should be increased to \$25.50 per SF, whereas the City has used \$25.

The Complainant provided a series of maps and aerial and frontal photos of the subject's six onsite buildings. He also provided an excerpt of the "Alberta Assessors' Association Valuation Guide", referencing and arguing on page 22 of C-1 that the best source of market rent information for assessment purposes is the rent roll; actual rents or leases within the first three years of their term; and rents or leases signed around the valuation date. The Complainant also provided and referenced on page 25 of C-1, an excerpt of an "Alberta Municipal Affairs" document regarding "Principles of Assessment" regarding assessment principles and practices in support of the foregoing.

On pages 31 to 36 of C-1 the Complainant provided the "Master Rent Roll" for the subject. On page 37 of C-1 he provided a reconstituted Altus version of the rent roll which listed the leased retail spaces in order of size from the smallest to the largest. He identified and argued that the more recent (2010) leases in the subject indicate that the typical rents used by the City to assess the subject are excessive.

The Complainant identified six retail space leases for spaces under 1,000 SF – three of which were 2010 leases, one was a 2008 lease, and two were 2003 leases. He argued that the median lease value for this space size was \$22 per SF. He also argued that the "Past 36 Month Income" median value was \$22.50 per SF.

He also identified twelve retail spaces in the 1,001 – 2,500 SF space category. He noted that three of the leases commenced in 2010 whereas the remaining nine leases commenced on dates ranging from 2001 to 2009. He argued that the median lease value for this category was \$22 per SF. He also argued that the "Past 36 Month Income" median value was \$26.60 per SF.

The Complainant identified three retail spaces in the 2,501 – 6,000 SF space category, noting that two of the leases commenced in 2009 and 2010 whereas the third was a 2002 lease. He argued that the median lease value for this category of space is \$26 per SF. He also argued that the "Past 36 Month Income" median value was \$25.50 per SF.

On page 39 the Complainant provided a detailed Income Approach to Value calculation for a requested assessment of \$10,080,000 based on his preferred retail space lease values of \$22 per SF for retail space sizes 0 – 1,000 SF and 1,001 – 2,500 SF respectively; and \$25.50 per SF for retail space sizes 2,501 – 6,000 SF.

On page 41, the Complainant provided an **alternate** Income Approach to Value calculation for the subject using \$26 per SF for the retail space category 2,501 – 6,000 SF instead of \$25.50 per SF – and, \$22 per SF for the other two space sizes. He calculated that by using \$26 per SF the indicated value is \$10,150,000. On pages 42 to 68 inclusive of C-1 the Complainant submitted but did not present, excerpts of selected legal and related matters and decisions.

Respondent's Position – Issue #1

The Respondent presented his Brief R-1 and argued that the Complainant's methodology and data conclusions are both flawed and incorrect. He referenced the Complainant's rent roll data and noted that in transposing data from the Master Rent Roll to the Complainant's reconstituted version – upon which the Complainant relied, several factual errors appeared to have occurred. For example he noted that the rent roll at page 34 shows a lease rate for retail space E2-10 of \$23 and not \$21 per SF. He noted that for retail space E2-22 the lease rate is \$25 and not \$23 per SF. Similarly, retail space E2-06 is \$25 and not \$22 per SF. And finally, retail space D2-02 is \$24 and not \$22 per SF.

The Respondent argued that when these values are corrected, the median value for CRU spaces 0 – 1,000 SF is \$25 and not \$22 per SF. The median value for CRU space 1,001 – 2,500 SF is \$24 and not \$22 per SF. He also noted that all of the 2010 leases in all three space categories in the subject appeared to be lease renewals and not new leases. He noted that the only recent new lease for space D2-14A which commenced July 1, 2008 is \$30 per SF. In addition, he argued that the seven 2010 leases in the subject average \$24.43 per SF, which when combined with the 2008 and 2009 leases, provide values which support the assessment.

The Respondent also noted that the Complainant has requested an increase in lease value for the 2,501 – 6,000 CRU space size category from the assessed \$25 per SF to \$25.50 per SF. The Respondent argued that when the factual corrections noted above are made to the Complainant's data, the revised indicated valuation is \$10,806,141 or \$10,800,000 (rounded) and not \$10,080,000 as requested.

The Respondent argued that the Complainant's methodology is flawed because he has inter-mixed actual and typical values in his calculations of alternate value. He noted that the subject has been assessed using "typical" market value indicators derived from extensive analysis of the recent market, of properties comparable to the subject in form, function, and quality – all of which is legislatively mandated under Mass Appraisal.

However, he noted that the Complainant has opted to use **typical** "Vacancy"; "Vacant Space Shortfall"; "Capitalization Rate"; "Non-Recoverable"; values while using **actual** lease rates from the subject. He argued that this is invalid methodology which previous Municipal Government Boards and Local Assessment Review Boards have rejected. He cited pages 25 to 29 in his Brief R-1 and Board Decision CARB 2262/2010-P in support of this position.

The Respondent noted that the Complainant had provided no lease data from any comparable property to support his arguments. In contrast, on page 21 of R-1 the Respondent provided 4 retail leases from a similar "A2" quality property (like the subject) at 4604 – 37 ST SW. The leases pertained to CRU spaces 0 – 1,000 SF and showed a mean value of \$27.81 per SF and a median value of \$28 per SF. The subject is assessed at \$27 per SF.

The Respondent also provided on page 21, six leases from similar retail properties having CRU spaces of 1,001 – 2,500 SF. Five of the lease comparables were from an "A2" quality property at 2739 – 17 AV SW, and another at 4604 – 37 ST SW. They showed a mean value of \$27.29 per SF and a median value of \$27 per SF. The subject is assessed at \$26 per SF.

On page 21 the Respondent provided a recent 2008 lease from the subject for CRU spaces of 2,501 - 6,000 SF. The lease showed a value of \$25 per SF which is the typical value used in the assessment of the subject. He noted however that the Complainant had argued for an increase in this rate to \$26 per SF.

The Respondent reiterated that the Complainant has provided no independent market data from other property comparables to support his requested values. Nor has he demonstrated in any manner, that the lease data provided by the Respondent is incorrect, invalid, or inapplicable to the subject. He argued that he has provided the only independent comparable market data in support of the "typical" values used to assess the subject. The Respondent argued that not only are the lease rates the Complainant is relying on incorrect, but when they are corrected, the values support the assessment.

The Respondent argued that the percentage change in assessed value being requested by the Complainant is approximately 3.8%. He noted that under provincially-mandated Mass Appraisal, the accepted principle is that an assessment should be between 95% and 105% - a 5% variance in value either in the negative or positive. Therefore, at 3.8% of 100%, the assessment is deemed to be fair and equitable. He noted that while an assessment must also be "correct", the Complainant had provided insufficient evidence to demonstrate that the assessment is incorrect by any accepted valuation principle.

The Respondent requested that the assessment be confirmed at \$11,220,000.

Board's Decision – Issue #1:

The Board finds that the Complainant's position in this appeal fails for the following reasons:

1. The Complainant has relied on faulty and factually incorrect lease data from the subject which renders his valuation conclusions unreliable. When this lease data is corrected, the resulting mean and median values support the assessment.
2. The Complainant has used an incorrect methodology wherein he has inter-mixed **actual** and **typical** values in his alternate Income Approach to Value calculations for the subject. This is a flawed methodology which has been consistently rejected by other Municipal Government and Assessment Appeal Boards as referenced in Board Decision ARB 2262/2010-P. The Board does not accept the Complainant's valuations that he developed using this methodology.
3. The Complainant has relied on certain site-specific leases in the subject that appear to be renewals and not new "market" leases more representative of the assessment cycle. The Board declines to accept their indicated values as representative of current "typical" market rates.
4. The Respondent provided ten lease comparables from other similar "A2" quality properties which the Complainant failed to adequately challenge, and which supported the typical assessed lease values applied to the subject. In contrast the Complainant provided no lease comparables in support of his requested lease values.

5. The Board finds that the Complainant's requested change to the assessed value is approximately 3.8% of the City's estimate of value pursuant to Mass Appraisal. The Board finds that 3.8% is well within the plus/minus 5% margin of error contemplated in Mass Appraisal and acceptable, particularly when the Board has received insufficient market or other evidence from the Complainant to demonstrate that the assessment is incorrect.
6. The Board finds therefore that the Complainant has failed to demonstrate that the assessment of the subject is unfair, inequitable, or incorrect.

Board's Decision:

The Assessment is Confirmed at \$11,220,000.

DATED AT THE CITY OF CALGARY THIS 29 DAY OF November 2011.


K. D. Kelly,
Presiding Officer

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

NO.	ITEM
1. C-1	Complainant Disclosure
2. R-1	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.*

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Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Retail – strip centre	Stand-alone	Lease rates	Site-specific lease Comparisons