

**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:

LOWE'S COMPANIES CANADA, ULC, as represented by Altus Group, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

R. Glenn, PRESIDING OFFICER

I. Fraser, MEMBER

R. Kodak, 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:	201492212
LOCATION ADDRESS:	13417 52 St SE
HEARING NUMBER:	65086
ASSESSMENT:	\$4,400,000

This complaint was heard on the 6th day of February, 2012 at the offices of the Assessment Review Board located on Floor Number 4, at 1212 – 31 Avenue NE, in Calgary, Alberta, in Boardroom 3.

Appeared on behalf of the Complainant: B. Neeson (Agent) Altus GroupLtd.

Appeared on behalf of the Respondent: P. McDermott and R. Farkas (Assessors)
City of Calgary Assessment

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

No issues of procedure or jurisdiction were raised.

Property Description:

The subject is a 127,681SF Big Box stand alone building currently used as a Lowe's Home Improvement retail store located on 12.95 Acres of assessable land in the South Trail Power Centre in the South East Calgary Community of McKenzie Towne.

Regarding Brevity:

In the interests of brevity, the Board will restrict its comments to those items the Board found relevant to the 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.

Issues:

The Complaint Form identified only one issue, that is, the amount of an assessment from a Supplementary Assessment. The Board believes that the issue could be succinctly stated as: whether the subject property is properly assessed, on a Supplementary Assessment in light of the following:

1. The original assessment for the subject land only was \$12,700,000.
2. Subsequently the subject was assessed on a supplementary basis at \$4,400,000 for land and improvements based on the completion of the construction on the subject property, for a total assessment of \$17,100,000.
3. The Complainant believes that the assessment is simply excessive and must be reduced.

Complainant's Requested Value:

The subject assessment was determined using the Income Approach to Value which incorporates a rental rate of \$10/SF. The Complainant seeks to have the assessed rental rate reduced to \$8/SF. This would reduce the total assessment from \$17,100,000 to \$13,650,000, providing for a supplementary assessment only reduced from \$4,400,000 to \$950,000.

Complainant's Position:

The Complainant states at the beginning of their argument that the Rental Rate (Income Approach) is the appropriate method of arriving at the assessed value. They present six comparables (five of which were Wal-Mart stores) with a size larger than 100,000 SF, which demonstrate Rent Rates with a median of \$7.34/SF. All of the comparables are owner occupied, but none of them have just a single party on title. Two of the comparables show a construction allowance of \$2.24/SF.

The Complainant then goes into a protracted examination of each of the comparables using an Income Valuation Approach. Further into their argument the Complainant begins an analysis of the actual leases of the subject comparables. They posit that some of their comparables leases were at a rental rate of \$10/SF, but, when tenant's allowances were considered, the effective rate is much lower (in the range of \$8/SF).

The Complainant then comments on the only two lease comparables which the Respondent chose to present. The lease comparables demonstrate a median rental rate of \$9.80/SF. They go on to state that these rates make no allowance for construction costs. And further, that one of the comparables has a non-arms length lease, leaving only one lease comparable which supports the Respondent's position. The Complainant goes on to state that one lease does not make a proper precedent.

The Complainant goes on to present a number of both LARB and CARB decisions which in the main, support a rental rate of \$8/SF. The Board is not bound by these decisions and so, this was not, in the large sense, helpful.

Respondent's Position:

The Respondent presents a number of comparables for properties in the size range of 50,000 to 100,000 SF. These demonstrated a median rental rate of \$14.43. They claimed that these comparables support a rental rate of \$10/SF for the subject property. The Respondent also presented a number of equity comparables for properties larger than 100,00 SF (mainly Home Depot and Rona stores) which demonstrated assessed rates of \$10/SF. The Respondent alleged that all of these assessments were appealed and upheld at the \$10/SF rate, and went on to provide documentary evidence of that admonition.

The Respondent then goes on to present three comparables from the same Power Centre which demonstrate a \$10/SF rate. They then proceed to present a most interesting comparison which utilizes the estimated value of construction as garnered from the Building Permit which issued for the subject property. This value of construction figure was stated on the Building Permit, which was attached, as: \$10,874,900.00.

The Respondent reiterates their total assessment is \$17,100,000. If the value of the construction as stated on the Building Permit is subtracted from the current assessment, then the Reminder Land Value is only \$6,225,100 (\$17,100,000 - \$10,874,900 = \$6,225,100). This leaves the Board with the conclusion that the assessed Residual Land Value would be \$11.03/SF (\$6,225,100 / 564,263 SF = \$11.03/SF) of land.

The Respondent further argues that if the Complainant's requested values are fully analyzed, the result is just plain not reasonable. The Complainant's requested property value is \$13,650,000. If the value of the construction of the subject property is subtracted, (\$13,650,000 - \$10,874,900 = \$2,775,100) then the resulting Remainder Land Value is \$2,775,000. This means that value per square foot is \$4.92/SF (\$2,775,100 / 564,263 SF = \$4.94/SF).

The Respondent goes on to argue that the Income Approach to Value is not the proper way to assess this kind of property. They carry on stating that the Complainant presented no evidence of Market Value, whereas the Respondent presented evidence of the Market Value of raw land having a range of \$23 to \$125/SF.

On cross examination the Respondent admitted that one lease comparable does not make or demonstrate a trend, but they countered that one lease with other support is a strong factor.

On rebuttal argument the Complainant argued that the whole of their rebuttal brief was directed to the Respondent's argument over Remaining Land Value as previously set out.

Board's Decision in respect of each issue:

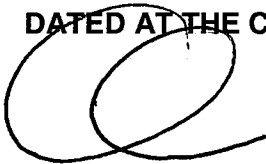
The only matter in issue is the amount of the subject supplementary assessment.

The Board notes that a challenge to any particular factor requires a review of all the relevant factors in an assessment. In the Board's view, the Complainant did not adequately address the requisite factor of Market Value, but instead chose to deal mainly with the Income Approach.. The comparables which were relied on by both the parties were quite restricted in terms of breadth.

The Respondent's argument and evidence on Market Value convinced the Board that the Complainant's position was not reasonable and therefore not supportable. For the Complainant to suggest that the subject land value was only \$4.92/SF was in the Board's judgement, not in keeping with established market values as demonstrated by the Respondent.

The Complainant bears the onus of convincing the Board that the subject assessment is not correct. The Board is not convinced by the Complainant's argument and evidence that the subject assessment is in error. Accordingly, the subject supplementary assessment is confirmed in the amount of \$4,400,000.

DATED AT THE CITY OF CALGARY THIS 16 DAY OF MARCH, 2012.



R. Glenn
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Disclosure
3. C3	Complainant Disclosure
4. C4	Complainant Disclosure
5. C5	Complainant Disclosure
6. C6	Complainant Disclosure
7. C7	Complainant Rebuttal
8. 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.*

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<i>Decision No. 2884-2011-P</i>		<i>Roll No.201492212</i>		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	Retail Anchor	Big Box	Income Approach	Market Value