

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:

Balboa Land Investments Inc. (as represented by Altus Group Ltd.) COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. Thompson, Presiding Officer

K. Farn, Board Member

R. Cochrane, Board 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 2013 Assessment Roll as follows:

ROLL NUMBER:	068083401
LOCATION ADDRESS:	120 8 Av SW
FILE NUMBER:	72588
ASSESSMENT:	\$11,810,000

This complaint was heard on 21 day of October, 2013 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- M. Cameron Agent, Altus Group Ltd.

Appeared on behalf of the Respondent:

- E Borisenko Assessor, City Of Calgary

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

[1] No jurisdictional or procedural issues were identified. The Board proceeded to hear the merits of the complaint.

Property Description:

[2] The subject property, known as the Clarence Block, is located at 120 8 Av SW in the Stephen Avenue Mall (in the DT8 zone of the downtown core). The building was constructed in 1901, renovated in 2002-2009, and is classified as an A2 quality by the City of Calgary. The building is assessed as having 24,493 square feet (sf) over two stories with storage in the basement and is sited on a parcel size of 0.23 acres. It is currently occupied by a single tenant, Sport Chek.

[3] The Subject property is assessed on the Income Approach to Value with a main floor retail space of 8,422 sf at a typical rate of \$36.00 per square foot (psf), retail upper of 6,288 sf at a rate of \$30.00 psf, 8,397 sf of retail lower at a rate of \$20.00 psf, 1,386 sf of storage at \$5.00 psf and eight parking stalls. The capitalization rate is 5.50%. The 2013 assessment is \$11,810,000.

Issues:

The subject building would better reflect the market at a rate of \$21.65 psf for all of the retail space in this building.

Complainant's Requested Value: \$9,110,000

Board's Decision:

[4] The assessment is confirmed at \$11,810,000.

Legislative Authority, Requirements and Considerations:

[5] The *Municipal Government Act*, Section 460.1(2), subject to Section 460(11), a composite assessment review board has jurisdiction to hear complaints about any matter referred to in Section 460(5) that is shown on an assessment notice for property, other than property described in Subsection 460 (1)(a).

Position of the Parties**Complainant's Position:**

[6] The Complainant stated that the typical rental rates applied to the subject property do not reflect recent leasing activity of typical and similar Stephen Av properties.

[7] The Complainant presented the subject properties 2012 rent roll [pg15-17] showing a \$39.00 psf rent for the total area of 24,493 sf. The lease terms were from February 2009 to February 2019. This property is 100% leased by a single tenant. The Complainant included a photograph of the subject property.

[8] The Complainant introduced a chart with the single recent lease of a retail space in a Stephen Av Building [pg 21, C1]. This 15 year lease, in the Christopher building, commenced in February of 2011 with a rental rate of \$21.65 psf for the 11,898 sf of retail space. The Complainant contends that even though this is a single lease, the City have in the past used a single lease to determine the typical rental rate of a space. Three examples of single lease analysis used by the City were provided by the Complainant [pg 24-24, C1].

[9] Alternatively, the Complainant submitted that if the rate of \$21.65 psf is not acceptable for all three floors of this property then the retail on the first floor should be at \$26.00 psf with the second floor rate at least equal to the main floor rate and the lower level space at \$17.50 psf. The Complainant provided a chart including two rental rates for retail main and one for the retail lower [pg 31-37, C1]. The Retail main rental rates were \$31.00 psf for 3,200 sf in the Ashdown building at 110 8 Av SW (a July 2010 lease with a 10 year term), the second for \$21.00 psf for 1,100 sf in the Ward Block at 105 8 Av SW (a Jun 2011 lease for a three year term). The lower level retail lease is in the Venator building at 226 8 Av SW for \$17.50 psf with an area of 6,764 sf and a 15 year term.

[10] The Complainant stated that there were no recent second story retail leases similar to the subject so contends the rental rate should be no higher than the main floor rate. This premise was based on the normal hierarchy of rental rates, as demonstrated by four examples of the City's income calculations where the retail upper space is always lower than the main. The Complainant also included an example of the lower rental rate hierarchy [pg 38-48, C1].

[11] Based on this method the resulting value would be \$9,600,000 for the subject property.

Respondent's Position:

[12] The Respondent stated that historically all of the properties on Stephen Av are assessed with one rental rate for the main floor regardless of use and a second rate for the upper floors (different rates depending if it its retail or office) and one rate for storage. All other typical factors in this zone are applied to all properties, regardless of class.

[13] The Respondent also submitted the subject property rent roll showing a 2009 ten year

lease for \$39.00 psf rate with a step up in 2016 to \$42.00 psf until 2019.

[14] The Respondent submitted a number of Board Decisions including the 2012 decision for the subject property and testified that the 2013 Business complaint for this property had been withdrawn.

[15] With reference to the Complainant's submission, the Respondent presented information on the Christopher Building at 221 8 Av SW. The Respondent claimed that in 2010 this building underwent extensive renovations undertaken by the new tenant. The Respondent presented a 2010 building permit in the amount of \$970,000 to build a restaurant in the existing suites and exterior facade. The Respondent stated that this large a renovation may have had an impact on the lease negotiations. As well, the Respondent stated that the entire building was leased at a single rental rate so it would be difficult to separate out the rental value per floor. This lease was not used in the City's analysis [pg 21-24, R1].

[16] With respect to the Complainant's analysis of the main floor rental rates the Respondent noted that the City had used both leases in their rental rate analysis however had included other leases as well. The Respondent stated that the Ward Block was somewhat atypical as it is the only property on Stephen Av that contains multifamily on the second and third floors and suffered from the effects of the construction of the Hotel Le Germain located behind it. This may have resulted in a lower rental rate. The 2011 Complainant's ARB submission was included to show evidence of this disruption and damages [pg 27, R1].

[17] The Respondent presented a chart with 34 equity comparables on Stephen Av [pg 29, R1] and stated all properties on Stephen Av are assessed using consistent rates.

[18] The Respondent stated that the City had enough rental information to derive specific rental rates for retail on the main, upper and lower levels and included its analysis on each space type [pg 30-31, R1]. The Respondent provided charts with four rental rates for the retail lower with a median of \$22.00 psf, two rental rates for retail upper with a median of \$31.71 psf and nine rental rates for retail main with a median of \$45.00 psf. The City also analyzed the retail main space type without the three rents from the Alberta Block as these showed a much higher rental rate and arrived at a median rental rate of \$35.50 psf. Three additional *post facto* leases were provided to show trends.

[19] Six Stephen Av sales were provided by the Respondent to show a range of \$321 psf to \$536 , a median \$457 psf and an assessment to sale ratio of 1.01 overall [pg 32, R1]. Photos and sale documents were included in the evidence [pg 33-116, R1].

Complainant Rebuttal

[20] In the Rebuttal document, the Complainant included two leases that it believes are valid comparisons to the subject property. The Complainant states these are the only leases that should be used to determine typical retail rates for this type of building in this location [pg 4, C2]. These two leases are the Ashdown building at a \$31.00 rate psf and the Ward Block at \$21.00 psf for a median value of \$26.00 psf.

[21] With regard to the City's comments regarding the Ward Block being atypical, the Complainant stated that the Respondent had not submitted any evidence to support its claims. The Complainant entered the Assessment Summaries for both the Ward Block and the Le Germain Hotel to show no adjustments had been made to account for construction influences. The Complainant noted the year of construction on the Le Germain was 2009, well before the lease agreement for the Ward Block was signed. The 2011 CARB decision for the Ward Block

was also included [pg 5-15, C2] to show that the assessed value was confirmed. To counter the Respondent comments on the large renovation taken on by the tenant possibly influencing the rental rate, the Complainant included evidence of other properties that incurred significant renovations along with their building permits and rent roll. [pg 19-26, C2].

[22] With respect to the Respondent's equity chart, the Complainant recreated the chart and added a column to show eleven of the 34 properties are multi floor buildings with a single tenant [pg 28, C2].

[23] The Complainant provided a new analysis using the nine leases in the City's 2013 Rental Analysis Stephen Av DT8 [pg 41, C2]. The Complainant excluded the properties that had the advantage of access to Scotia Mall and those in the Alberta Block (this is a unique property called Fashion Central and almost a small mall in the Complainant's opinion). Three leases remain to truly represent typical properties on Stephen Av showing a mean rental rate of \$32.33 psf and median of \$31.00 psf. The Complainant provided photographs of Scotia Centre Mall and Fashion Central to illustrate why these would not be typical properties to include in the rental study.

[24] The Complainant included several Board Decisions for the Boards consideration.

Board's Reasons for Decision:

[25] The Board reviewed all the evidence presented by both the Complainant and Respondent. The Board also notes that the nature of the submissions dictate that in some instances certain evidence will be deemed more relevant than others so the Board will restrict its comments to the evidence it deemed relevant. It must be noted as well that while the Board pays heed to previous Board Decisions it is not bound by their decisions. The Board must decide this case based on the evidence and argument before it.

[26] The Complainant's first request is to apply a typical rental rate of \$21.65 psf to all three floors of the subject building with the rental rate established from one lease comparable. The Board accepts that there are leases that apply a single rental rate for the total area, in fact this is the case in the subjects own lease. This would not necessarily influence the Board's decision. The Board also accepts in some circumstances that there is a limited amount of market available, especially if the property is unique. There was no evidence to lead the Board to conclude that this property is unique. Ultimately, the question the Board must be concerned with is does the rental rate of \$21.65 represent typical market rent for the subject property? This rate was derived from a single lease comparable with little supporting documentation and the Board is not persuaded that this reflects typical market value.

[27] With regard to the alternative method presented by the Complainant, the Board reviewed all of the lease information from both the Complainant and Respondent:

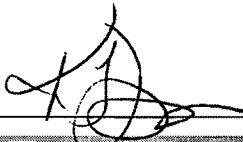
- 1) The Respondent presented nine leases for the analysis of the main floor typical rental rate. It was generally agreed that three of these leases were not similar enough to be used for the analysis of rental rates for the subject property. The Board notes that the remaining six leases included the two leases presented by the Complainant and support the rental rate of \$36.00 psf for the main floor retail. The Board reviewed the four properties not used in the Complainant's analysis taking heed of the comparability concerns outlined by the Complainant. The Board was not convince that there was sufficient evidence to show these properties should be excluded from the analysis. The Board finds the rental rate of \$36.00 psf is appropriate for the

main floor retail space.

- 2) The Respondent presented four leases for the lower level retail space which included the Complainant's lease. The four leases support the lower rental rate of \$20.00 psf and are sufficiently comparable to support the subject's lower level retail space rate.
- 3) The Board notes that the Respondent provided two leases for second floor retail space which supported the \$30.00 psf rate while the Complainant provided none but asked the Board to consider the hierarchy of rental rates applied to other properties or accept the main floor rate. The Board finds the rental information supports the rate of \$30.00 psf for the upper retail space and accepts that value as appropriate.

[28] The Board finds they are not convinced that the Complainant's rental analysis argument has met the burden of proof. The Board finds the Respondent's rental rates are a reasonable representation of typical market rates and have been equitably applied and therefore confirms the rental rates for this property.

DATED AT THE CITY OF CALGARY THIS 7th DAY OF November 2013.



K. Thompson

Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
3. 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.*

Property Type	Property Sub-Type	Issue	Sub issue
retail	Stand alone	Income approach	Net market rent