

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:

***CP REIT Alberta Properties Limited (as represented by Altus Group Limited),
COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***M. Axworthy, PRESIDING OFFICER
H. Ang, BOARD MEMBER
A. Wong, 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 2014 Assessment Roll as follows:

ROLL NUMBER: 048027403

LOCATION ADDRESS: 2928 23 ST NE

FILE NUMBER: 74156

ASSESSMENT: \$10,540,000

This complaint was heard on 22 day of July, 2014 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:

- *M. Cameron, Agent*
- *K. Fong, Agent*
- *A. Izard, Agent*

Appeared on behalf of the Respondent:

- *R. Sidikou, Assessor*
- *S. Turner, Assessor*

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

- [1] No procedural or jurisdictional matters were raised.

Property Description:

[2] The subject property is developed with a 51,725 square foot (SF) building comprising 50,000 SF of Big Box space 40,001-80,000 SF, and 1,725 SF of non-retail mezzanine space. It has a Subproperty use code of CM0206, Retail-Freestanding Big Box and is located in the community of South Airways. The subject was constructed in 1996 and is classified as "B" quality. It is assessed using the Income Approach to value with a rental rate of \$14.00 per SF, a vacancy rate of 1.00% and a cap rate of 6.50%.

Issues:

[3] While a number of issues were identified on the Complaint Form, the following issues were argued at the hearing:

- a) The current assessment does not reflect the physical condition of the subject as of December 31, 2013 as a "C" quality supermarket.
- b) The assessed rental rate of \$14.00 per SF is not fair and equitable and should be reduced to \$10.00 per SF.

Complainant's Requested Value: \$6,740,000; revised at the hearing to \$7,520,000

Board's Decision:

- [4] The Board reduced the assessment to \$7,520,000.

Legislative Authority, Requirements and Considerations:

[5] Under the Act Section 460.1(2) and 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 (1)(a).

[6] The Board reviewed the evidence provided and will limit its comments to the relevant facts pertaining to this case and materials which led to the decision.

Issue: Should the property be reclassified from Retail-Freestanding Big Box to a "C" quality Grocery Store?

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

[7] The Complainant stated that the subject was incorrectly classified as Big Box retail and should be reclassified as a "C" quality Grocery Store and the "C" quality Grocery Store assessed rental rate of \$10.00 applied to the subject or alternatively, the "B" quality Grocery Store rental rate of \$13.00 per SF applied, should the Board determine that the subject was of "B" quality.

[8] In support of its argument, the Complainant provided photographs of the subject showing that it was a warehouse type grocery store with refrigerators, freezers, walk-in coolers and fresh and packaged food items for sale to the public [C1. P 19-21], attesting that these features differentiated the subject from other Big Box stores. The Complainant stated that none of The City's equity comparables [C1, p. 74] were capable of selling food items.

[9] The Complainant stated that in the absence of a clear definition of grocery store from the Assessment Business Unit (ABU), it turned to the City of Calgary's Land Use Bylaw (LUB) 1P2007, for a definition [C1, pp. 33-43]. The Complainant stated that LUB includes grocery stores under the definition of "Supermarket" in Section 314, as follows:

"314 'Supermarket' means:

- (i) where fresh and packaged food is sold;
- (ii) where daily household necessities are sold;
- (iii) that will be contained entirely within a **building**;
- (iv) has a minimum **gross floor area** greater than 465.0 square metres; and
- (v) that may include a limited seating area no greater than 15 square metres for the consumption of food prepared on the premises;"

The Complainant argued that the subject clearly fell within the definition of a Supermarket and should be classified as a grocery store.

[10] The Complainant stated that the subject is no different than Basha Foods, a 20,000 SF grocery store two blocks from the subject which occupies the former Office Depot space at 2717 Sunridge Way NE. When Office Depot moved out, The City reclassified the space from Big Box retail to Grocery Store.

[11] Regarding the quality rating of the subject, the Complainant argued that the photographs of the subject indicate that it is a basic warehouse type of structure with polished concrete floors and metal racks and was a lesser quality than the other grocery stores included in The City's 2014 Citywide Supermarket Lease Analysis: B Quality [C1, p. 47] such as the Safeway stores at 1440 52 ST NE (Trans Canada Mall) and 1600 90 AV SW (Glenmore Landing) [C1, pp. 54-72].

Respondent's Position:

[12] The Respondent stated that the subject operates like a Costco and is placed in a big box retail assessment category for that reason. Target and Walmart stores also have freezers and coolers and sell food items, and they are also assessed as Big Box retail.

[13] The Respondent stated that the Land Use Bylaw definition of "Supermarket" was not used by the (ABU). In response to questioning, the Respondent stated that while it did not have a specific definition for Grocery stores they were generally characterized as being close to a residential area and having a size range of 14,000 to 75,000 SF.

[14] The Respondent stated that the subject was considered to be a Big Box store and not a Grocery Store as it did not target the residential consumer as it sold items in bulk and sold commercial grade food preparation equipment. It was not located near a residential area.

[15] The Respondent acknowledged that Basha Foods was an anomaly in that it was assessed as a Grocery Store and not a Big Box. The Complainant noted that Basha Foods was assessed at \$13.00 per SF, not \$10.00 which the Complainant was requesting for the subject.

Board's Reasons for Decision:

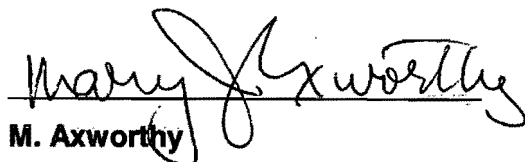
[16] The Board finds that the subject is a Grocery Store of "C" quality.

[17] The subject operates like a Grocery store, contains all of the standard equipment that constitutes a grocery store such as refrigeration units and freezers, the sale of typical fresh and packaged food items etc. and falls within the 14,000 to 75,000 SF size range generally used by the Respondent.

[18] The photographic evidence provided by the Complainant indicates that the subject is a basic structure warehouse structure and finish and is of a lesser quality than other Grocery Stores assigned a "B" quality rating by the Respondent.

[19] The subject is reclassified from Retail-Freestanding Big Box with a quality rating of "B" to a Grocery Store with a quality rating of "C". The assessed rental rate is reduced accordingly from \$14.00 per SF to \$10.00 per SF.

DATED AT THE CITY OF CALGARY THIS 13 DAY OF August 2014.



M. Axworthy

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 Only

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Big Box Store	Big Box or Grocery Store	