



## Calgary Assessment Review Board

### DECISION WITH REASONS

In the matter of the complaint against the 2014 property assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

between:

***333 Sunridge Way Inc., COMPLAINANT  
(as represented by Fairtax Realty Advocates Inc.)***

and

***The City Of Calgary, RESPONDENT***

before:

***I. Weleschuk, PRESIDING OFFICER  
B. Jerchel, BOARD MEMBER  
D. Steele, 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:

<b>ROLL NUMBER:</b>	<b>049015308</b>
<b>LOCATION ADDRESS:</b>	<b>3333 Sunridge Way NE</b>
<b>FILE NUMBER:</b>	<b>74775</b>
<b>ASSESSMENT:</b>	<b>\$10,570,000</b>

This complaint was heard on 2<sup>nd</sup> day of July, 2014 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 8.

Appeared on behalf of the Complainant:

- *S. Storey, Agent – Fairtax Realty Advocates Inc.*

Appeared on behalf of the Respondent:

- *R. Farkas, Assessor – City of Calgary*

**Procedural or Jurisdictional Matters:**

[1] The Board as constituted to hear and decide on this matter was acceptable to both parties.

**Property Description:**

[2] The subject property is located at 3333 Sunridge Way NE, in the Sunridge Commercial District of northeast Calgary. The building has a total assessable area of 51,001 square feet (SF) on one level. It is demised into an assessable area of 40,035 SF (categorized as Big Box 40,001-80,000 SF for assessment purposes) and an area of 10,966 SF (categorized as CRU 6,001-14,000 SF for assessment purposes). The larger area is occupied by Home Outfitters, which is a typical retail operation. The smaller space is occupied by Stir Crazy, which is a children's party facility.

[3] The 2014 Property Assessment is done using an Income Approach, applying the factors as shown in the table below. The net operating income (NOI) for this property is calculated as \$713,605. The capitalization rate applied is 6.75%. The resulting assessment is \$10,570,000 (rounded).

Sub-components	Area (SF)	Rental Rate (\$/SF)	Vacancy Rate %	Operating Cost (\$/SF)	Non-recoverable %
Big Box 40,001-80,000 SF	40,035	14.00	1.00	8.00	1.00
CRU 6,001-14,000 SF	10,966	17.00	5.50	11.50	1.00

**Issues:**

[4] The Complainant raised one issue related to the 2014 Assessment Income Approach Valuation. The Complainant's position is that the 2014 Property Assessment is too high because:

- The rental rates assigned to the two space components are incorrect. The Big Box 40,001-8000 SF category rental rate is incorrect at \$14.00/SF, and should correctly be \$12.50/SF; and the rental rate assigned to the CRU 6,001-14,000 SF category of \$17.00/SF is incorrect and should correctly be \$14.00/SF.

**Complainant's Requested Value:**

**\$9,400,000**

**Board's Decision:**

[5] The 2014 Property Assessment of \$10,570,000 is confirmed.

**Legislative Authority, Requirements and Considerations:**

[6] Section 4(1) of Matters Relating to Assessment and Taxation Regulation (MRAT) states that the valuation standard for a parcel of land is "market value". Section 1(1)(n) defines "market value" as "the amount that a property, as defined in Section 284(1)(r) of the Act, might be expected to realize if it is sold on the open market by a willing seller to a willing buyer." Section 467(3) of the Act states that "an assessment review board must not alter any assessment that is fair and equitable, taking into consideration (a) the valuation and other standards set out in the regulations". The issues raised in the Complaint may refer to various aspects of the assessment or calculation of the assessed value, and may be addressed by the Board. However, the ultimate test that the Board must apply is whether the assessed value reflects the market value of the assessed property.

[7] The Board notes that the words "fair" and "equitable" are not defined in the Act or its Regulations. Equitable is defined in Black's Law Dictionary (Seventh Edition, West Group, St. Paul, Minnesota, 1999) as "just, conformable to principles of justice and right". For the purpose of this decision, the Board considers an assessment that reflects market value to be "fair and equitable" as the taxpayer is being assessed in accordance with the assessment standard applied to all properties in that property category.

**Issue 1: What is the correct rental rate for each of the two subject retail space categories?**

**Complainant's Position:**

[8] The Complainant presented Exhibit C1, and noted that page 2 summarized its position regarding the rental rate assigned to each of the Big Box 40,001-80,000 SF category and the CRU 6,001-14,000 SF category.

[9] The Complainant presented a summary of the subject lease information on page 3, and the subject rent roll (07/01/2013) on page 4 and 5, in Exhibit C1. The lease rental rate shown for the CRU 6,001-14,000 SF space (occupied by Stir Crazy) is \$13.00/SF, but the effective lease rate is \$11.70/SF as a result of rent holidays given the tenant in some summer months. The lease rental rate shown for the Big Box 40,001-80,000 SF space (occupied by Home Outfitters) is \$16.25/SF, but the effective rent being paid is \$12.68/SF because this rental rate of \$16.25/SF includes property taxes, therefore is not a triple net rate.

[10] The Complainant presented five market rent comparables on page 6, Exhibit C1. These five comparable spaces ranged from 10,050 to 18,831 SF, had a commencement date ranging from February 2004 to January 2013 and rental rates ranging from \$11.00 to \$16.00 per square foot. The Complainant argued that these five comparables indicate a market rent of \$15.00/SF for the CRU 6,001-14,000 SF space and a market rent of \$12.50/SF for the Big Box 40,001-80,000 SF space.

[11] The Complainant argued that the subject property was in some ways inferior to the five comparables presented, as it only had one loading bay door located in the larger bay. The smaller bay (CRU 6,001-14,000 SF) did not have a loading bay door, which made this an atypical retail space.

[12] The Complainant presented the 2014 Non-Residential Properties-Income Approach Valuation sheet for the property located at 2930 32 Av NE (page 7-8, Exhibit C1), and owned by the same owner as the subject property. The Complainant noted that this is a building that has a total of 50,045 SF demised into a 33,339 SF and a 16,706 SF retail space. One rental rate of \$15.00/SF is applied to the entire building. The Complainant argued that for consistency, the subject building should also be assessed based on its total assessable area, not by its bay sizes.

[13] In cross-examining the Respondent's evidence (Exhibit R1), the Complainant argued that the size categories are arbitrary. The Complainant noted the limited number of lease comparables used to derive lease rates for the B Quality NE Neighbourhood 6,001-14,000 SF category (page 21, Exhibit R1) and that some of these leases commenced in 2006. With regard to the rental rate analysis presented for the Big Box 40,001-80,000 SF category (page 24, Exhibit R1), the Complainant again noted the few comparable leases and that none of the leases commenced after 2006). As a result, the Complainant argued that this lease data is unreliable.

[14] The Complainant argued that the leases used by the City to derive its rental rate for the Big Box category were the same used in the previous few years. In the previous year, the rental rate applied to this category was apparently \$12.50/SF and that since there is no market evidence to change that rate, it should continue to apply for the 2014 Assessment.

[15] No rebuttal evidence was disclosed and no rebuttal evidence was presented at the hearing.

### **Respondent's Position:**

[16] The Respondent's position is that the rental rates used to prepare the 2014 Assessment are supported by its analysis, which is presented on page 21, Exhibit R1 for B Quality NE Neighbourhood 6,001-14,000 SR CRU space and page 24, Exhibit R1 for Big Box 40,001-80,000 SF space. The Respondent stated that this is the best and most current leasing data that the City has for these categories of retail space, based on the information it gathers annually from non-residential property owners.

[17] The Respondent presented some evidence on page 15-17, Exhibit R1 to rebut some of the information presented by the Complainant on the five market rent comparables presented on page 6, Exhibit C1. The Respondent also demonstrated that the property located at 2930 32 Av NE is demised into two spaces that both fall into the Big Box 14,001-40,000 SF category, and that is why the entire building is assigned the same rental rate for assessment purposes.

[18] The Respondent noted an error in the table presented on page 27, Exhibit R1. This is a table showing 2014 Property Assessment Equity Comparables for Big Box 40,001-80,000 SF space (see the leased area shown for each occupant). The Respondent also presented a table of Equity Comparables for the CRU 8,001-14,000 SF category on page 28, Exhibit R1. The Respondent acknowledged that equity is not an issue raised by the Complainant.

### **Findings of the Board**

[19] The only issue before the Board is the rental rate applied to each of the two space types in the subject property, and whether are correct. Both parties raised the issue of equity or fairness, but both parties acknowledged that equity is not an issue before this Board.

[20] The Board heard argument related to the subject property regarding why it is inferior to typical retail space, but no evidence was presented to demonstrate this characteristic. The Complainant presented five market rate comparables (page 6, Exhibit C1) that supported the requested rate of \$15.00/SF for the CRU 6,001-14,000 SF space and \$12.50/SF for the Big Box 40,001-80,000 SF space. The Board notes that no supporting evidence was presented describing any of these five comparables nor any explanation of how or why these are good market rent comparables. Furthermore, the Complainant failed to demonstrate how these five sales comparables or some subset of these five sales comparables support either the requested rental rate of \$15.00/SF or \$12.50/SF.

[21] The Board notes that three of the five comparables presented by the Complainant on page 6, Exhibit C1 are located in southwest Calgary, so are not used in the NE Calgary rental rate data presented by the Respondent in Exhibit R1. Of the two comparables located in northeast Calgary, the property located at 3508 32 Ave. NE (Dollarama) is in the A Quality NE Neighbourhood 6,001-14,000 SF data (page 20, Exhibit R1). The comparable located at 3508 32 Ave NE (Thrift Shop) is not in the A or B Quality data, but its lease commencement date is February 2004 and may be considered dated for the City analysis.

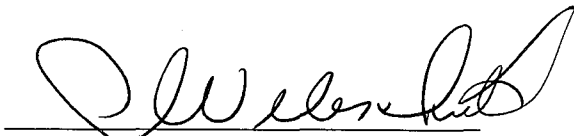
[22] The Complainant made reference to the rental rate used to prepare previous assessments for the Big Box 40,001-80,000 SF category and that no new lease information was available to the City, therefore questioned how the rental rate could change. The Board notes that the lease rates used in previous assessments was not in evidence before this Board. Furthermore, the Board acknowledges Section 285 of the Act, which reads in part: "Each municipality must prepare annually an assessment for each property in the municipality...". In other words, each assessment year is a new valuation exercise. It is not appropriate to focus only on one factor in the assessment model without having regard to all the factors and their quantum when considering an assessment. The Board puts no weight on this argument.

[23] The Board considered the lease rate analysis presented by the Respondent. While there may be weaknesses in the leases used in the various analyses, the Board finds this evidence supports the rental rates assigned to the two subject retail categories.

**Board's Reasons for Decision:**

[24] The 2014 Property Assessment of \$10,570,000 is confirmed. The Board considered the rental rate evidence presented by the Complainant and is not persuaded that the rental rates assigned to the two subject retail space components to prepare the 2014 Assessment are incorrect. The rental rate analyses presented by the Respondent support the rental rates used to prepare the 2014 Assessment.

DATED AT THE CITY OF CALGARY THIS 11<sup>th</sup> DAY OF July 2014.



**I. Weleschuk**  
**Presiding Officer**

**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 MGB Administrative Use Only**

Subject	Type	Sub-Type	Issue	Sub-Issue
CARB	Commercial	Retail Big Box Retail CRU	Rental Rate	