

**TOWN OF HINTON  
COMPOSITE 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:**

***Home Hardware Stores Ltd.  
Represented by Altus Group Ltd.  
COMPLAINANT***

**and**

***The Town of Hinton, RESPONDENT  
Represented by Warren Powers, AMAA***

**before:**

***J. Acker, PRESIDING OFFICER  
Joe Couture, MEMBER  
R. Krewusik, MEMBER***

This is a complaint to the Hinton Composite Assessment Review Board in respect of a property assessment prepared by the Assessor of The Town of Hinton and entered in the 2011 Assessment Roll as follows:

<b>ROLL NUMBER:</b>	<b>0080909600</b>
<b>LOCATION ADDRESS:</b>	<b>582 Carmichael Lane</b>
<b>HEARING NUMBER:</b>	<b>0151-005</b>
<b>ASSESSMENT:</b>	<b>\$ 4,850,000</b>

This complaint was heard on 14<sup>th</sup> day of November, 2011 at the Town of Hinton Council Chambers located at Floor Number 2, 131 Civic Centre Road, Hinton, Alberta.

Appeared on behalf of the Complainant:

- *Walid Melhem*

Appeared on behalf of the Respondent:

- *Warren Powers*

**Preliminary Matter:**

The Respondent alleged that the Complainant's supplementary disclosure package was not received within the legislated timeframe contemplated in the Matters Relating to Assessment Complaints Regulation (MRAC). Specifically, the Clerk of the Composite Assessment Review Board did not receive either of two packages emailed to her office. The Assessor did receive the information.

The Complainant produced copies of emails exchanged with the Assessor and those sent to the Clerk (exhibit C2).

The Clerk testified that she received the first email outlining the intent to send two subsequent emails with large attachments. The Complainant provided the automated response received by Altus Group notifying of the first email being read.

The Board reviewed MRAC s8(2)(a)(i) which reads:

*(2)(a) the complainant must, at least 42 days before the hearing date,  
(i) disclose to the respondent and the composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing; and ....*

MRAC S(9)(2) states: *A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8.*

Accordingly, the Board ruled that the supplementary disclosure in its entirety is excluded and shall not be heard.

The Complainant indicated a desire to continue with the hearing using only the initial disclosure evidence.

**Property Description:**

The subject is a 206,474 sq. ft. (4.74 acre) parcel with a 25,355 sq. ft. retail/office/shop structure and a separate 12,095 sq. ft. warehouse/shop improvement. Both improvements were constructed in 2007/08 and are of average to good condition, purpose built for Home Hardware Ltd. as a retail/commercial home improvement centre. The improvements are comprised of

both heated and finished space and 9,570 sq. ft. of cold storage in the warehouse building.

A developed mezzanine space of 1838 sq. ft. is located in the main building and is used for office and lunchroom space as well as male/female washroom facilities.

**Issues:**

1. The single issue is the rental value attributed to the mezzanine space of the main building. The value of the mezzanine is included in the base rental rate for the gross rentable space determined by the building footprint.

**Complainant's Requested Value:** \$ 4,671,500

**Complainant's Position**

The Complainant testified that, in his experience, all big box store mezzanine space is included within the overall lease of the retail space and is not leased for any value beyond the net leasable area rate applied to the building footprint. He indicated that this space is usually not accessible without entering the retail area of the main store and is most often used for ancillary purposes by the building tenant. These uses include staff facilities and minor office space.

He argued that this industry standard should result in the mezzanine space being assessed at the nominal rate of \$1.00/sq. ft. rather than the \$10.00/sq. ft. applied by the assessor. This is the single issue under appeal.

The Complainant argued that the single tenant occupant leases the entire building with the rental rate applied to the gross square footage of the building footprint and that this rental rate includes ancillary mezzanine spaces which are not calculated as additional square footage.

**Respondent's Position**

The Respondent provided the Board with evidence outlining his approach to assessment of the subject property. Using the income approach, the assessor applied values in his calculation consistent with the condition of the subject property and the various spaces contained within the improvements. The rental rate applied to the mezzanine space was within the typical range for second floor improved office spaces in the Town of Hinton.

He indicated that the Town of Hinton has very few big box stores and thus he did not develop a specific income model for such facilities.

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

1. The mezzanine space in the subject building is correctly assessed within an acceptable range of values comprising the total subject assessment.

**Reasons:**

The single issue in contention in this appeal is the correctness of the assessment resulting from an income approach to value using a rental rate of \$10.00/sq. ft. for the mezzanine area of the retail store improvement.

The complainant argued for a nominal rate of \$1.00/ sq. ft. to be applied to the 1838 sq. ft. of mezzanine space rather than the \$10.00/sq. ft. assessed. This would result in an adjusted assessment of \$4,671,500 from the appealed assessment of \$4,850,000 – a reduction of \$16,542. This represents a requested adjustment of .34%.

The Court in the BC Supreme Court Decision (Bentall) addressed the issue of range of values in dealing with an appeal from a decision of the BC Property Assessment Appeal Board as follows:

*"[99] Bramalea does not stand for the proposition that the taxpayer is entitled to the lower of a specific equitable value, or a specific actual value. There is a range of values which might constitute actual value and a range of value which might constitute equitable value. Bramalea stands for the proposition that when equity is an issue, it is only if the range of values determined to be actual value lies entirely outside the range of values that is equitable, that an adjustment is required."*

*[100] The Board concluded that the calculations, after the math error was corrected, were still within the tolerable range of values. In my view, this means that, not only is it unnecessary to change the original assessments; it would be wrong as a matter of law to change them.*

*[101] With respect to the Appellants' argument that the Board acted in an arbitrary manner, it is my view that the Board was simply following the general principle of assessment law with respect to "range of values" and determining, as it is entitled to do, that the original Assessment Roll values were within an acceptable range of actual value.*

The Board is not persuaded that the Complainant's argument or the facts of this appeal support any change to the assessment rendered by the Respondent.

Accordingly, the Board confirms the assessment at \$4,850,000.

**It is so ordered.**

**DATED AT THE TOWN OF HINTON THIS 15<sup>TH</sup> DAY OF November 2011.**



**J. P. Acker**  
**Presiding Officer**

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Emails – Preliminary Issue

*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.*

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Retail	Stand Alone	Income Approach	Net Market Rent/Lease Rates