

**CITY OF LETHBRIDGE
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

CARB – 0203-0004/2010

IN THE MATTER OF A COMPLAINT filed with the City of Lethbridge Composite Assessment Review Board (CARB) pursuant to Part 11 of the *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

BETWEEN:

Altus Group Ltd. - Complainant

- a n d -

City of Lethbridge - Respondent

BEFORE:

Members:

M. Vercillo, Presiding Officer

B. LeLievre, Member

K. Perry, Member

A hearing was held on Thursday, August 5, 2010 in the City of Lethbridge in the Province of Alberta to consider complaints about the assessments of the following property tax roll numbers:

Roll No./ Property identifier	Assessed value	Owner
1-0-166-2720-0001 9913058;4;27	\$10,307,000.00	Canadian Tire Real Estate Ltd.

Appeared on behalf of the Complainant:

- None

Appeared on behalf of the Respondent:

- V. Blazek
- L. Wehlage

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PART A: BACKGROUND AND DESCRIPTION OF PROPERTY UNDER COMPLAINT

The subject property is a large retail property operated as a Canadian Tire store, built in 2000 and located at 2720 Fairway Road South, Lethbridge. The building has a total net rentable area of approximately 80,865 square feet (SF) and is comprised of 70,178 SF of main retail space, 8,087 SF of automotive service space, and 2,600 SF of mezzanine space. The building is situated on an assessable land area of approximately 332,798 SF.

PART B: PROCEDURAL or JURISDICTIONAL MATTERS

The CARB derives its authority to make this decision under Part 11 of the Act. No specific jurisdictional or procedural issues were raised during the course of the hearing, and the CARB proceeded to hear the merits of the complaint, as outlined below.

PART C: ISSUES

The CARB considered the complaint form together with the representations and materials presented by the parties. The matters or issues raised on the complaint form are as follows:

1. The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Alberta Regulation 220/2004.
2. The use, quality, and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirement of Section 289 (2) of the Municipal Government Act.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.
4. This Notice is filed based on information contained in the Assessment Notice as well as preliminary observations and information from other sources. Therefore the requested assessment is preliminary in nature and may change.
5. The classification of the subject premise is neither fair, equitable, or correct.
6. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties.
7. The assessment of the subject property is in excess of its market value for assessment purposes.
8. The assessed rental rate applied to the Retail Anchor Tenant Space within subject property should be \$10/SF.
9. The assessed rental rate applied to the Mezzanine Space within subject property should be \$1/SF.
10. The Municipality has neither correctly, nor equitably, calculated and provided the correct allocation of space for this particular property as identified by the annual Rent Roll or its physical condition as a property as of December 31.
11. The municipality has incorrectly calculated the assessable area and dimensions of the subject property

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12. The municipality has misrepresented the nature of the automotive section and has assessed it separately to the subject; however this is not the nature and extent of this property. The automotive should be assessed at the same rate as the main floor retail.

However, as of the date of this hearing, only the following issues remained in dispute and are restated as follows:

1. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties, and therefore:
 - a. The assessed rental rate applied to the main Retail Space within subject property should be \$10.25/SF.
 - b. The assessed rental rate applied to the Automotive Service Space within subject property should be \$10.25/SF.
 - c. The assessed rental rate applied to the Mezzanine Space within subject property should be \$1.00/SF.

ISSUE 1: The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties, and therefore:

- a. The assessed rental rate applied to the main Retail Space within subject property should be \$10.25/SF.

The Complainant provided a chart of Lethbridge "Retail Anchor Tenant Equity Comparables" that compared year of construction, area and lease rates per SF of popular retail stores similar to the subject. The comparables included Home Depot, Wal-Marts, Costco, Zellers and the Canadian Tire store in north Lethbridge. The chart can be summarized as follows:

1. Year of construction ranged from 1993 to 2007 with an average of 2001.
2. Area ranged from 89,417 SF to 203,525 SF with an average of 136,639 SF.
3. Lease rate per SF ranged from \$6.98 to \$10.25 with an average of \$9.25 (the Respondent corrected the assessed rates for the two Wal-Mart's to \$9.75 from \$9.25).

Based on this chart, the Complainant concluded that a reasonable lease rate for the subject's entire main floor space (retail and automotive service) should be \$10.25 per SF.

The Respondent provided a chart of 2010 lease rate comparables, comparing lease rates of mezzanine space, auto service space and retail space to that of the subject. With regards to retail space, the comparables included The Brick, Future Shop, Sobeys, Safeway and Save-On. The chart for retail space can be summarized as follows:

1. Year of construction ranged from 1991 to 2008.
2. Area ranged from 34,600 SF to 91,941 SF.
3. Lease rate per SF ranged from \$12.00 to \$17.75 with an average of \$14.81.

Based on this chart, the Respondent assigns a lease rate for the subject's retail space at \$10.75 per SF.

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The Respondent also provided a Marshall & Swift cost approach to supermarket and discount stores, in an attempt to support his retail space lease rate for the subject by showing the difference in construction costs between the two types of stores. He highlighted that a class “C” and “average” supermarket will cost out at \$70.98 per SF while a similarly rated discount store similar to the subject will cost out at \$54.88 per SF, or about a 29% difference. In applying this difference to the largely supermarket lease rate comparables he concluded that the assigned lease rate applied to the subject’s retail space is fair and equitable.

Decision: Issue 1

In view of the above considerations, the CARB finds as follows with respect to Issue 1: The retail space lease rate used by the Respondent is fair and equitable. The CARB finds that both parties’ retail space comparables provide good information and are considered together in concluding that the retail space lease rate assigned by the Respondent at \$10.75 per SF is fair and equitable.

ISSUE 2: The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties, and therefore:

- b. The assessed rental rate applied to the Automotive Service Space within subject property should be \$10.25/SF.

The Complainant provided no additional direct evidence with regards to automotive service space. Reliance was placed on the evidence provided in issue 1 above, where the Complainant suggested that all main floor space (retail and automotive service) should be assessed at a rate of \$10.25 per SF.

The Respondent provided the aforementioned chart of 2010 lease rate comparables, comparing lease rates of mezzanine space, auto service space and retail space to that of the subject. With regards to automotive service space, the comparables included Mr. Lube, Texaco, and other small auto service retailers. The chart for automotive service space can be summarized as follows:

1. Year of construction ranged from 1963 to 2007.
2. Area ranged from 1,663 SF to 7,255 SF.
3. Lease rate per SF ranged from \$16.61 to \$33.73 with an average of \$25.86.

Based on this chart, the Respondent assigns a lease rate for the subject’s automotive service space at \$17.00 per SF.

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During questioning from the CARB, it was revealed that the Respondent did not assess a higher lease rate to the automotive service spaces of the Complainant's comparable properties. For example, the Respondent indicated that the two Wal-Marts did not incur a higher lease rate assessment to their automotive service space because that space was only 2% of the entire floor space. Yet it was also revealed that the north side Canadian Tire also did not incur a higher lease rate assessment to their automotive service space in spite of the fact their automotive service space is greater than 2% of the entire floor space.

Decision: Issue 2

In view of the above considerations, the CARB finds as follows with respect to Issue 2: The lease rate used by the Respondent is not fair or equitable. The CARB finds that automotive service space of comparable retailers do not incur a higher lease rate assessment and therefore, from the standpoint of fairness and equity, the CARB agrees with the Complainant and sets the automotive service space at the same assessed lease rate as the retail space of \$10.75.

ISSUE 3: The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties, and therefore:

- c. The assessed rental rate applied to the Mezzanine Space within subject property should be \$1.00/SF.

The Complainant provided a chart of Calgary lease rate comparables showing a breakdown of main floor space to mezzanine space. In addition the Complainant provided what appeared to be lease rate definitions within lease contracts as well as rent roll examples of Calgary, Lethbridge and other municipalities. It was difficult for the CARB to understand the evidence fully and with the absence of the Complainant was unable to ask questions.

The Respondent provided the aforementioned chart of 2010 lease rate comparables, comparing lease rates of mezzanine space, auto service space and retail space to that of the subject. With regards to mezzanine space, the comparables were small retailers that contained 2nd floor mezzanine space. The chart for mezzanine space can be summarized as follows:

1. Year of construction ranged from 1945 to 1973.
2. Area ranged from 1,580 SF to 12,000 SF.
3. Lease rate per SF ranged from \$2.50 to \$6.00.

Based on this chart, the Respondent assigns a lease rate for the subject's mezzanine space at \$5.00 per SF.

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Decision: Issue 3

In view of the above considerations, the CARB finds as follows with respect to Issue 3: The mezzanine space lease rate used by the Respondent is fair and equitable. The CARB finds that the Complainant failed to provide convincing and comparable evidence to consider. Therefore, the Respondent's assigned lease rate of \$5.00 per SF for mezzanine space is fair and equitable.


PART D: FINAL DISPOSITION OF COMPLAINT

The complaint is allowed and the assessment is revised as follows.

Roll No./Property identifier	Value as set by the CARB	Owner
1-0-166-2720-0001 9913058;4;27	\$9,731,000	Canadian Tire Real Estate Ltd.

It is so ordered.

Dated in the City of Lethbridge, in the Province of Alberta, this 7th day of August, 2010.


Presiding Officer