

Edmonton Composite Assessment Review Board

**Citation: Hudson's Bay Company c/o Wilson Laycraft v The City of Edmonton, ECARB
2012-000353**

Assessment Roll Number: 4022893
Municipal Address: 1 KINGSWAY GARDEN MALL NW
Assessment Year: 2012
Assessment Type: Annual New

Between:

Hudson's Bay Company c/o Wilson Laycraft

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF
Don Marchand, Presiding Officer
Lillian Lundgren, Board Member
Ron Funnell, Board Member

Preliminary Matters

[1] Upon questioning by the Presiding Officer, the parties indicated that they had no objection to the composition of the Board. In addition, the Board members indicated that they had no bias in this matter.

[2] The evidence provided to the Board from the parties was affirmed to be true.

[3] Two complaints were filed relative to the 2012 property assessment of **\$299,777,500**. One was filed by Altus Group as agent for the owner, Omers Realty Corporation. The other was filed by Hudson's Bay Company c/o Wilson Laycraft (HBC).

[4] The parties reached an agreement to revise the 2012 assessment amount for the property to \$298,328,500 with regard to the Altus Group complainant, and this recommended assessment amount was presented to the Board prior to the hearing of the HBC complaint.

[5] The Board's decision on the recommended assessment amount is rendered within CARB Order: **Altus Group v The City of Edmonton, ECARB 2012-001267**.

Background

[6] This hearing relates only to the HBC's leased anchor space or portion within Kingsway Garden Mall (the subject property). The Kingsway Garden Mall complex consists of three anchor tenants identified as; the Bay, Sears and Zellers. There are several commercial retail units (CRUs) of various sizes including, restaurants, banks, kiosks and food court. The mall also has some office space and storage space as well. The site has restaurant pads included.

[7] The capitalized income approach to value was used in the preparation of the assessment, and as such, a key component of the approach is the consistent and equitable measure of the area to which the rental rate(s) are applied.

[8] This complaint deals only with the correct area to be used to calculate the assessment of the HBC anchor space.

Issue(s)

- [9] What is the correct assessment for roll number 4022893 - the Kingsway Garden Mall?
- a. What is the correct area to be used to calculate the assessment of the HBC anchor space - the subject property defined for this complaint?

Legislation

[10] The Board's jurisdiction is within the ***Municipal Government Act, RSA 2000, c M-26***

s 467(1) An assessment review board may, with respect to any matter referred to in section 460(5), make a change to an assessment roll or tax roll or decide that no change is required.

s 467(3) 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,
- b) the procedures set out in the regulations, and
- c) the assessments of similar property or businesses in the same municipality.

[11] The Board gave consideration to the requirements of an assessment.

289(2) Each assessment must reflect

- (a) the characteristics and physical condition of the property on December 31 of the year prior to the year in which a tax is imposed under Part 10 in respect of the property, and
- (b) the valuation and other standards set out in the regulations for that property.

[12] For this hearing particular attention was given to the “typical market conditions for properties similar to the subject.”

The valuation standard is set out within the Matters Relating to Assessment and Taxation Regulation (AR 220/2004).

2. An assessment of property based on market value

(a) must be prepared using mass appraisal,

(b) must be an estimate of the value of the fee simple estate in the property, and

(c) must reflect typical market conditions for properties similar to that property

Position of the Complainant

[13] The assessment attributes 162,404 square feet to the HBC space; the Complainant is requesting the use of 153,264 square feet.

[14] It is the Complainant’s position that the Respondent used the gross building area (GBA) as the measure of the HBC anchor space in the assessment while a standard of gross leasable area (GLA) was applied to similar properties.

[15] A list of 17 similar properties that included: five HBC, three Home Outfitters, and nine Zellers stores were provided. The complainant advised that of the seventeen similar properties shown; only the subject is assessed using GBA. The difference between the GBA and the GLA is 9,140 square feet, which the Complainant states amounts to an over assessment of \$660,500.

[16] The Complainant advised that the matter of: “the 9,140 square feet size difference”, was before a Municipal Government Board (MGB) 2007 business assessment hearing. The MGB decision reduced the 2007 business assessment on the basis of the GLA being 153,265 square feet. The Complainant also provided an *Agreement to Correction of Assessment form* that shows a reduction to the year 2008 business assessment on the basis of the GLA being 153,265 square feet. The Complainant acknowledged that the practice of issuing a business assessment notice has been phased out in the Municipality; however, an annual Business Revitalization Zone (BRZ) assessment notice still exists for the subject, and the 2012 notice shows the use of 153,265 square feet as its basis.

[17] The Complainant indicated that the matter of, the 9,140 square feet size difference, was not raised as an issue nor argued relative to the property assessment until the filing of the subject’s 2012 property assessment complaint. The Complainant argued that whether for property or business assessment similar properties must be treated alike.

[18] The board was provided a letter dated April 21, 1988 from John A. MacDonald Architect Ltd., an Architect firm to HBC. The Complainant indicated that the Architect’s letter states that the GBA is 162,404,140 square feet and the GLA is 153,263,585 square feet. These are the same areas cited in the provided Lease Amending and Assumption Agreement dated January 14th 1994. This is also the same evidence provided to the MGB business assessment hearing in 2007.

[19] The Complainant requested the same treatment as other similar premises, that the HBC be assessed using the Architect's determined GLA, and that the same lease agreement's defined GLA be used as the basis of calculating the assessment. The Complainant argued that this unfair treatment has existed for a number years. The calculated adjustment to the assessment resulting from the use of the wrong area is **\$660,500** and the Complainant asked that this amount be deducted from the recommended revised 2012 assessment amount.

Position of the Respondent

[20] The Respondent advised the Board that the GLA has been utilized consistently and equitably for space similar to the subject. The subject has been assessed on the GLA of 162,404 square feet since it was constructed in 1987. The Respondent explained the GLA definition applied to the subject and of those properties similar to the subject. The GLA is defined as: "the total floor area designed for the occupancy and exclusive use of the tenants, measured from the outside perimeter walls and to the centre line of interior demising walls separating tenancies. Rent is typically based on the area of each tenant's premises."

[21] The Respondent acknowledged that Landlords and Tenants may deviate from this method, however typically the GBA and the GLA area are equal.

[22] The Respondent provided a copy of the March 1988 dated lease between Westgreen Developments (North) Ltd. and Hudson's Bay Company that forms part of the Lease Amending and Assumption Agreement dated January 14th 1994 and explained how the term "Gross Leaseable Area" as defined within the subject lease is not typical because of exclusions. The areas excluded within the lease are identified as: "all penthouses, elevators, machine rooms, electrical and mechanical vaults and rooms and facilities, vertical transportation faculties, public washrooms, loading docks, and truck receiving and delivery facilities and any interior areas not enclosed and heated."

[23] The Board received from both parties a list of codes and department named areas together with the square footage assigned to each coded area that in total makeup the 9,140 square feet.

Code	Dept. Name	Area SF
4706	Duct	269
4708	Stair	2,533
4709	Escalator	914
4710	Elev. freight	420
4711	Elev. Passenger	136
4716	Elev. Machine Rm.	236
4719	Dead Space	35
4720	Vest.	978
4726	Generator	216
4727	Elect. - Meter	106
4728	Elect. - Panel	430
4729	Elect. - Transformer	209
4740	Garbage Rm.	265
4745	Telephone Rm.	254
4752	Door Packet	187
4808	Stair Access	238
4810	Escalator Access	130

4811	Entrance Access	52
4820	Elev. Passenger Access	472
4821	Vest. Access	138
4722	Washrm. – Men’s	296
4723	Washrm. – Women’s	523
4725	Washrm. – H’capped	104
	Total	9,140

[24] It is the Respondent’s conclusion that the exclusion of such areas as elevators, washrooms, stairs, electrical rooms, garbage room, and telephone room, etc. does not include space that is for the exclusive use of the tenant.

[25] The Respondent provided a 2011 Request for Information (RFI) returned tenant roll showing that the area of 162,404 square feet was reported by the owner.

[26] The Respondent provided a Kingsway Mall floor plan dated March 13, 2012 that indicates the area of 162,404 square feet for the subject property.

[27] In response to the application of 153,265 square feet used in the past by business assessments division, the Respondent advised that realty assessment division disagrees with the decision and that an error was made in the past. As the “business tax assessment” no longer exists it can be no longer be questioned.

[28] The Respondent asked the Board to uphold the use of 162,404 square feet as HBC’s typical area to which the market rent is to be applied, and requested the assessment be revised to the agreed to assessment amount submitted by the Owner and the City for the entire mall at \$298,328,500.

Decision

[29] The 2012 assessment of the subject property is revised to \$298,328,500.

Reasons for the Decision

[30] The Board finds that the correct area to be used to calculate the assessment of the HBC anchor space is 162,404 square feet.

[31] The 9,140 square feet of space as identified by the parties is space for the exclusive use of HBC. The Board agrees with the Respondent that the 9,140 square feet is in sole control of the tenant. The Board also agrees with the Respondent that the assessment of washroom space within the common area of the mall that is not part of any tenant CRU space or Anchor Space is not for the exclusive use of the tenant, and is not included as part of a tenant’s gross leaseable area.

[32] The Board places weight on the reported gross leaseable area as identified within the rent roll provided by the owner in response to the Municipality’s request for information. It is the same area as used in the assessment.

[33] The Board places weight on the current floor plans, wherein the gross leaseable areas are shown for the subject and other anchor space. The areas identified on the plans show the same area as used in the assessment.

[34] The gross leaseable area applied to the HBC portion of the subject mall is correct and is consistently measured similarly to other anchor space within the mall.

Heard commencing September 18, 2012.

Dated this 2nd day of October, 2012, at the City of Edmonton, Alberta.

Don Marchand, Presiding Officer

Appearances:

Brian Dell

Patrick Leclair

for the Complainant

Tim Dmytruk

Tanya Smith

for the Respondent