

**CALGARY
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-26.1, Section 460(4).

between:

ALTUS GROUP LTD., COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

L. Lundgren, PRESIDING OFFICER

J. Rankin , MEMBER

D. Steele , MEMBER

This is a complaint to the Calgary Assessment Review Board in respect of two property assessments prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER:	098017700 098017809
LOCATION ADDRESS:	2653 61 AV SE 2665 61 AV SE
HEARING NUMBER:	56349 56389
ASSESSMENT:	\$1,200,000 \$ 822,500

These complaints were heard on 15th day of June, 2010 at the office of the Assessment Review Board located at 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- *R. Worthington, Altus Group Ltd.*

Appeared on behalf of the Respondent:

- *D. Kozak, City of Calgary*

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

There were no procedural or jurisdictional matters.

Property Descriptions:

The property located at 2653 61 AV SE is a 1.51 acre vacant parcel of land with the land use designation Industrial - Heavy (I-H). The assessment was prepared using a base rate of \$1,050,000 per acre which resulted in the 2010 Assessment of \$1,200,000.

The other property located at 2665 61 AV SE (adjacent to 2653 61 AV SE) is a 0.78 acre vacant parcel of land with the land use designation Industrial – Heavy (I-H). The assessment was also prepared using a base rate of \$1,050,000 per acre which resulted in the 2010 Assessment of \$822,500.

Issues:

1. What is the correct base rate per acre to be applied to the subject properties for assessment purposes?
2. Respecting the property located at 2665 61 AV SE, does the existence of a mutual access easement agreement registered on the Land Title Certificate have a negative affect on the market value?

Complainant's Requested Value: \$543,500 for 2653 61 AV SE
\$750 for 2665 61 AV SE

Board's Decision in Respect to Each Matter or Issue:

The Complainant filed these complaints on the basis that the base rate of \$1,050,000 per acre used to prepare the assessment is incorrect because it is based primarily on sales of Industrial- General (I-G) vacant land. The two properties under complaint are I-H land and should not be valued on the same base rate as I-G vacant land because I-H vacant land is less valuable.

The Complainant asserts that I-G vacant land and I-H vacant land should be valued using different base rates per acre because they are significantly different zonings. In support of this argument, the Complainant submitted the LAND USE BYLAW – 1P2007 dated July 23, 2007 and pointed to the following.

Respecting the INDUSTRIAL - HEAVY (I-H) DISTRICT, the purpose of this district is intended to be characterized by:

- (a) industrial uses that typically have significant external nuisance effects that are likely to impact their land and neighbouring parcels;
- (b) industrial uses that are generally larger in scale and require large parcels;
- (c) Uses that typically feature tall stacks, silos, settling ponds, large unscreened structures, extensive outdoor activity or outdoor storage, and cranes or equipment that can not be integrated into a building;
- (f) developments that require thorough scrutiny and wide discretion by the Approving Authority.

Respecting the I-3 HEAVY INDUSTRIAL DISTRICT, the purpose of this district is to provide for manufacturing, assembling and fabricating activities, including large scale or specialized operations whose external effects are likely to be felt to some degree by surrounding districts. In addition, those uses with established functions in the economy but having a well-known nuisance potential are to be permitted only within this district.

Respecting the INDUSTRIAL –GENERAL DISTRICT, the purpose of this district is intended to be characterized by:

- (a) parcels in internal locations within industrial areas;
- (b) a wide variety of industrial uses; and
- (c) industrial buildings that little or no relationship to adjacent parcels.

The Complainant concluded by stating that the above uses demonstrate that I-H land and I-G land are sufficiently different in terms of purpose and permitted/discretionary land uses that they should not be valued using the same base rate per acre.

The Complainant submitted that there are only three sales of I-H vacant land in the relevant time frame, one of which should not be used as a sales comparable because it has three negative influences. The Complainant relied on two sales which were I-4 prior to the new zoning bylaw (LAND USE BYLAW – 1P2007) and would be equivalent to heavy industrial zoning now. The two sales used by the Complainant are located at 9250 48th ST SE and 6620 86 AV SE. The property located at 9250 48th ST SE is a 2.23 acre parcel in South Foothills which sold for \$302,826 per acre on April 21, 2008. The property located at 6620 86 AV SE is an 8.29 acre parcel which sold for \$360,000 per acre on February 11, 2009. The RealNet transaction sheets were submitted to establish that these are valid sales. The Complainant stated that the third sale, 2647 61 AV SE adjacent to the subject parcel, should not be used because the time adjusted sale price of \$226,558 per acre represents the value of a parcel with the following influences: shape, environmental concerns, and limited uses/access problems. The subject parcel has none of these influences and is, therefore, dissimilar.

The Respondent submitted that the SE base rate of \$1,050,000 is applied to all vacant land zoned I-G, I-B, I-C, and I-H because the sales evidence supports this grouping. The Board noted that no market evidence was presented to show that these properties sell for the same base rate per acre.

The Respondent presented eleven sales comparables, ten of which are from Dufferin industrial area and one in the Foothills industrial area. All eleven properties are zoned I-G, range in size from 0.87 acres to 8.77 acres, and sold for between a time adjusted sale price of \$602,837 per acre and \$760,544 per acre in 2008/2009. The assessment to sales ratio (ASR) median for this group of sales is 0.99. During the course of the hearing, the Respondent decided that there was some confusion in the documents regarding 6620 86 AV SE and perhaps the Board shouldn't use it.

The Board finds that there are significant differences between the uses allowed in the I-H and I-G districts, notably, the I-H district accommodates heavy industrial development with operations that generally create impacts beyond site boundaries and the I-G district is intended for sites mainly in the interior of industrial areas which do not have any nuisance factors that adversely affect the adjacent parcels. Although the Complainant demonstrated the differences in the uses in I-H and I-G districts, the Complainant had insufficient evidence to establish that I-H land sells for less than I-G land. However, the Board finds that the best sales comparables are the two sales used by the Complainant located at 9250 48th ST SE and 6620 86 AV SE because they are similar in terms of use, size and location. With respect to the sold property at 6620 86 AV SE, both parties submitted it as a sales comparable in the documents. Although the Respondent identified some typos in the document for this sale, the Board accepts it as a valid sale and a good comparable.

The Complainant is relying on the two sales, 9250 48th ST SE that sold for \$302,826 per acre and 6620 86 AV SE that sold for \$360,000 per acre to support his request for a base rate of \$360,000 per acre. The Board finds that \$360,000 is the correct base rate to be applied to the two properties under complaint. Accordingly, the assessment for the property located at 2653 61 AV SE is reduced to the requested \$543,500.

With respect to the second property under complaint, 2665 61 AV SE, there is a second issue to be determined by the Board: whether or not the mutual access easement agreement has a negative influence on the market value.

The Complainant argued that the subject cannot be sold and is limited to the use of parking by the property next door at 2707 61 AV SE as a result of the easement registered on the title of the subject property. The Complainant submitted that there is no market evidence for properties similarly encumbered, and is, therefore, requesting a nominal value of \$750. The Complainant submitted Board Order MGB 032/10 which set a nominal value of \$750 for a parcel required for parking by an adjacent owner.

The Respondent did not counter the position taken by the Complainant.

The Board accepts the position of the Complainant that the property can not be sold nor can it be leased to a party other than the owner located at 2707 61 AV SE, and therefore, has limited value in the marketplace. Accordingly, the assessment for the property is reduced to the requested \$750.

Board's Decision:

The complaints are allowed and the property assessments are reduced as follows:

Roll No. 098017700 2653 61 AV SE \$543,500
Roll No. 098017809 2665 61 AV SE \$750.

MAILED FROM THE CITY OF CALGARY THIS 24th DAY OF June, 2010.



L. Lundgren
Presiding Officer

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.*