

**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, Section 460(4).

between:

Altus Group Ltd., COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

L. Lundgren, PRESIDING OFFICER

P. Charuk, MEMBER

R. Deschaine, MEMBER

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

ROLL NUMBER:	068141407
LOCATION ADDRESS:	227 12 AV SE
HEARING NUMBER:	59438
ASSESSMENT:	\$2,850,000

This complaint was heard on 2nd, day of July, 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:

- B. Neeson

Appeared on behalf of the Respondent:

- D. Grandbois

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

There were no procedural or jurisdictional matters.

Property Description:

The subject property is a 13,288 square foot parcel of land improved with a 6360 square foot restaurant. It is an improved property assessed as land value highest and best use. It is located in the BL-2 economic zone and is assessed using a base land rate of \$215 per square foot (psf).

Issues:

1. What is the highest and best use?
2. What is the correct base rate for the subject if valued as vacant land?

Complainant's Requested Value: Revised request \$2,047,000

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

1. What is the highest and best use?

The Complainant argued that the subject property is leased as a restaurant and should be valued on the Income Approach to Value using typical market factors of \$26 psf for upper floor rent, \$24 psf for main floor rent, 2% vacancy rate, \$8.25 vacant space shortfall, 1% non recoverable allowance and an 8% capitalization rate which yields a value of \$2,047,000. This valuation summary is the foundation for the requested value of \$2,047,000 (\$154 psf for the land area).

The Respondent stated that the legislation requires the determination of market value of the subject property as of July 1st, 2009 with consideration for the highest and best use as though vacant or improved. Highest and best use is the most profitable use. The Respondent values the property on the Income Approach to Value and on the Direct Sales Approach and sets the assessment on the higher of the two values. The Complainant's requested value using the income approach is lower than the value indicated using the direct sales approach, and is therefore, not a correct estimate of market value.

The Respondent submitted that the current use of restaurant is most likely a holding use because it is leased on a month-to-month basis and is leased for the below market rent of \$9.91psf.

The Board finds that the Respondent's interpretation of the highest and best use principle is correct. In determining the market value of the subject, the Board must consider "the most probable selling price" and whether the subject would be sold on the basis of the existing use or the permissible uses. The fact that the current lease is a month-to-month lease for \$9.91 psf is a clear indication to the board that the property will be sold as a redevelopment site or redeveloped by the current owner.

The Board finds that the highest and best use of the subject property is vacant land.

2. What is the correct base rate for the subject if valued as vacant land?

The Complainant submitted eleven sales comparables that sold from March 2007 to April 2010 ranging in sale price from \$118 to \$264 psf. In answer to questions, the Complainant identified five sales in the same economic zone (BL-2) as the subject and agreed that two of these sales are non-arms length sales. The Board notes that leaves three sales of property in the same economic zone:

123 12 AV SE which sold for \$200 psf in March 2007

126 13 AV SE which sold for \$264 psf in August 2007

105 10th AV SE which sold for \$178 psf in April 2007

The Complainant also submitted two groups of properties, 119 - 123 12 AV SE and 209 - 215 12 AV SE, which were listed for sale at \$163 and \$229 psf respectively. The property at 123 12 AV SE sold for \$200 psf in March 2007 and was subsequently listed for sale at \$163 psf in April 2010. This listing also demonstrates that the market is trending downward.

To further demonstrate that the market declined from April 2007 to December 2009, the Complainant presented three groups of properties which resold:

1715 – 1725 9A SW first sold for \$220 psf in December 2007 and then resold for \$142 psf in December 2009.

633 10th AV SW first sold for \$334 psf in April 2007, resold for \$597 psf in March 2008, and sold again for \$221 psf in September 2009.

632 and 634 12 AV SE sold for \$198 psf in September 2007 and then resold for \$115 in September 2009.

In answer to questions, the Complainant agreed that the above re-sales are distressed sales.

The Complainant is requesting the Board to reduce the property assessment to \$2,325,400 (\$175 psf for land area) if the Board finds that the subject should be valued on the direct sales approach.

The Respondent submitted that all vacant land in the BL-2, BL-3, BL-4, BL-6, BL-7, BL-8, and FS-1 is assessed using the same base rate of \$215 psf. The Respondent presented five sales comparables from within these economic zones which have a median sale price psf of \$221. These sales support the assessed rate of \$215 psf.

After reviewing the sales evidence submitted by both parties, the Board finds the best indicators of market value to be the sales within the same or similar economic zone which are valid arms length sales. While there was some disagreement by the parties whether the Respondent's sales were reflective of vacant land sales, the Board finds that the sales were identified as vacant land sales or redevelopment sites by RealNet, or in the alternative, the Complainant did not provide sufficient evidence to persuade the Board that the sales should be eliminated from the group of vacant land sales comparables.


The Board relied on three of the sales presented by the Complainant; 123 12 AV SE, 126 13 AV SE, and 105 10th AV SE, in addition to all five sales presented by the Respondent. The Board notes that

neither party time adjusted the sales to the valuation date of July 1st, 2009, and the Board accepts the explanation given by the parties that the sample was too small to produce reliable time adjustment factors. The median sale price per square foot of the eight sales is \$217 psf which supports the base rate used by the Respondent to assess the subject property. The Board finds the correct base land rate for the subject to be \$215 psf.

Board's Decision:

The complaint is denied and the property assessment is confirmed at \$2,850,000.

MAILED FROM THE CITY OF CALGARY THIS 22 DAY OF July 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.*