

**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:

Paul G. Petry, PRESIDING OFFICER

Don Steele, MEMBER

Ike Zacharopoulos, 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:

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|--------------------------|------------------------------|
| ROLL NUMBER: | 045240207 |
| LOCATION ADDRESS: | 2008 – 14 Street N.W. |
| HEARING NUMBER: | 59578 |
| ASSESSMENT: | \$1,140,000 |

This complaint was heard on 5 day of July, 2010 at the office of the Assessment Review Board located at Floor Number Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant: B. Bickford

- **Altus Group Ltd. – Complainant**

Appeared on behalf of the Respondent: D. Zhao

- **The City of Calgary - Respondent**

Property Description and Background

The subject property consists of an 804 sq. ft. retail improvement built in 1984 situated on 14,553 sq. ft. land parcel located at 2008 – 14 Street N.W. Fourteenth Street is a relatively busy thoroughfare with many smaller retail outlets not dissimilar to 16th Avenue N.W. between 16th Street and 1st Street. The site coverage for the subject is only 5.5% and the Assessor had used a land value only approach to arriving at the assessment for 2010. As a result the assessment had increased by approximately 66% over the 2009 assessment.

Issues:

1. Does the assessment based on land only of \$ 1,140,000 represent a fair and equitable market value of the land and improvements for subject property?

Other issues were raised in the Complainant's complaint filed with the Assessment Review Board (ARB) on March 5, 2010. The only issues that the parties brought forward in the hearing on June 8, 2010 before the Composite Assessment Review Board (CARB) are those referred to above, therefore the CARB has not specifically addressed any of the other issues initially raised by the Complainant in their initial complaint.

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

Issue 1 – The correct, fair and equitable value for the subject property is \$ 870,000.

Overview of the Positions of the Parties

The Complainant indicated that the primary issue before the CARB in this case is one of equity. The Assessor suggests that the property has been valued based on its highest and best use, however the subject property is an income producing property and should be valued in the same manner as other neighbouring properties which have been valued using the income approach. The building is leased at a rate of \$30.00 per sq. ft. and the excess land is leased as parking for the neighbouring office building.

The net operating income for this property using the City of Calgary parameters for vacancy, operating expenses and non recoverable expenses produces an amount of \$70,186. Applying the City's typical cap rate of 8% yields a value of \$870,000 and the Complainant argued that this is the maximum value the Board should consider. The 66% increase in this year's assessment is not in anyway justified when given the fact the market was in decline over the valuation period. The Complainant referred the Board to graphic information from which it was argued their conclusion that the market was in decline. The Complainant argues that the Assessor has subjectively applied a futuristic value that has been termed a highest and best value. A highest and best use analysis must at minimum include what is legally allowable, physically possible, financially feasible and maximally productive. No such analysis has been done by the Assessor. Section 289(2) of the Municipal Government Act (Act) directs that the assessment respect the characteristics and physical condition of the property as of December 31, 2009. As of that date the property was improved and leased: it was not vacant land. Further section 293 (1) of the Act requires that the Assessor must prepare the assessment in a fair and equitable manner. This has not been done as similar properties to that of the subject have been evaluated using the income approach which appears to produce a much lower value than the land value only approach used to value the subject. This then has resulted in significant inequity among similar retail properties and specifically with respect to the subject. The Complainant submitted a list of 11 comparables to demonstrate this alleged inequity. Two of these comparables were assessed using the land value only and the others were assessed using the income approach. The end values varied widely and the Complainant argued that much larger parcels with larger improvements were valued in the same range as the subject while properties closer in parcel size and improvement size to that of the subject were valued at almost half the value of the subject. The Complainant also argued that the Assessor has no creditable basis for the land value they have imposed. The Assessor has offered only three sales to support there land value; one in Bowness, one on 10 Avenue S.E and one on Centre Street N.W. It appears that the Assessor has, in the end, relied on the Centre Street sale which shows a time adjusted value of \$107 per sq. ft. This value is coincidentally the land rate used to value the subject. The Complainant argued that such a limited analysis of land sales can not be used to predict values for retail properties in the N.W. such as the subject. The Complainant recommended that the CARB accept that there has been little change in market values June 30, 2008 to July 1, 2010 and set the assessment for the subject property at \$700,000 for 2010.

The Respondent argued that the subject property has a considerable amount of land and a very small improvement. The income approach simply does not produce market value for this property. The Assessor explained that in cases like the subject, the Assessment is developed using a land only value and ignoring any additional value there may temporarily be in the improvement. It was argued that a recent CARB decision (ARB 0638/2010-P), respecting a dispute as to which valuation method should be used, clearly sets out that the method the Assessor may use in arriving at the assessment is not a matter that should be addressed by the CARB. Therefore in this case the CARB should not decide the question of method, raised by the Complainant. The land value formula applied to the subject was 10,000 sq. ft. at \$107 per sq. ft. and the remaining 4,553 sq. ft. at \$17 per sq. ft. resulting in an assessed value of \$1,140,000. The Respondent indicated that the subject should also have been assessed an additional 5% for corner influence which would have brought the assessment up to \$1,197,000. The Respondent submitted three sales in support of the land value formula used by the City. These sales were for parcels ranging in size from 5,227 sq. ft. to 9,148 sq. ft. and all but one were located in different areas of the City. The values per sq. ft. ranged from \$107 per sq. ft. to \$165 per sq. ft. The Assessor indicated that this formula applied to subject has also been applied to other land only valuations in this area of the City. Three the assessment comparables were introduced to demonstrate this; however other factors influenced the end values so it was not entirely clear as to what land values were used. The Assessor was asked how the Assessor determines when to apply the income approach vs the land value only approach

or what criteria is used to differentiate between properties to be assessed on the income approach vs. the land only approach. The response was rather vague but the CARB conclude that the method of arriving at which approach should be used is some what subjective and primarily based on the opinion of the Assessor as to which approach to apply. It was also argued that the sale of the subject in December of 2007 for the sum of \$1,000,000 provides the best value benchmark for the subject. Although the Complainant argued that market values have declined, in some areas land values have increased over the valuation period. The Respondent argued that in this case it is clear that the income approach will not result in market value and therefore the CARB should confirm the assessment based on the land only valuation.

Findings and Reasons:

The CARB carefully reviewed the assessment evidence for the comparable properties offered by the Complainant and found that there are widely differing results in the values placed on these properties. We agree with the Complainant that it would appear that at least some of these large and unexplained differentials arise because of the Respondent's apparent subjective application of the land only approach in some case and the application of the income approach in other cases. For example a property occupied by Starbucks at 1116 – 16 Avenue N.W is assessed at \$791,000 which has a smaller land size and includes an improvement more than twice the size of the subject. If this property were to be assessed using the land only formula the value would be \$1,075,000. It is obvious to the CARB that inequity exists between the subject and this comparable as well as with others. We believe that this inequity may be a result of the lack of market criteria which should be the basis for applying the concept of highest and best use by the Assessor. The CARB did not have the benefit of any explanation or evidence from the Assessor as to all of the critical components which must be considered when applying highest and best use parameters to a property or group of properties within a particular economic zone. In any event the results of the subject assessment show it to be inequitable considering other similar properties and therefore relief to the Complaint is warranted. The CARB considered the sale of the subject in 2007, however this sale occurred at a high point in the market and no evidence was led by either party as to what market changes have occurred since the sale in this particular economic area of the city. The CARB agrees with the Complainant that the Assessors sales were insufficient to support the land value formula applied to the subject, however this becomes moot in light of the Board's decision to grant relief based on the equity evidence. In this regard the majority of properties similar to the subject have been value on the income approach and the Complaint's unrefuted pro-forma applying the Respondent's typical income approach values produces a value for the subject of \$870,000. This is the value that the CARB believes is reflective of fairness and equity considering other similar properties.

Decision

Based on a careful review of all the evidence and argument advanced in this case and in light of the findings and reasons above the CARB reduces the assessment of the subject property to \$870, 000.

DATED AT THE CITY OF CALGARY THIS 21st DAY OF July 2010.


Paul G. Petry
Presiding Officer
PP/kc

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.*