

**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:

Don H Marchand, PRESIDING OFFICER

Peter Charuk, MEMBER

Allan Zindler, 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:	111162400
LOCATION ADDRESS:	7403 Macleod TR SW
HEARING NUMBER:	59500
ASSESSMENT (2010):	\$2,290,000

This complaint was heard on 18TH day of June, 2010 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant; *Altus Group Ltd.*: G. Worsley

Appeared on behalf of the Respondent; *City of Calgary*: B. Duban

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

- Prior to the hearing the jurisdictional matter filed by letter dated March 26, 2010 was withdrawn.

Description and Background of the Property under Complaint:

The subject is a 2-storey retail building with 12,458 square feet of rentable area (6,229 per floor) plus a full basement, built in 1978 and a corner lot of 14,386 square feet. The corner location is MacLeod Trail and 73rd avenue SW within the Kingsland district. The assessment concluded is based on the application of the capitalized income approach.

The lease rates used in the analysis are: \$16.00 per square foot for the main floor (retail), \$13.00 per square foot for the upper (office), and \$3.00 per square foot for the lower (storage). A 4% vacancy allowance together with operating cost and non-recoverable allowance amounts of \$8.00 and \$1.00 respectively were applied. The resulting net operating income was capitalized at 8%. Within the subject's Assessment Review Board Complaint form under *Section 5 – Reason(s) for Complaint* five points were identified as the grounds of appeal.

The Complainant advised that only the fifth point: *>Associated parcel assessment of \$366,500 required for parking should be removed from subject's assessment.* would be argued at the hearing.

The Complainant submits that based on the current by-law the subject business operation requires 69 parking stalls, this is based on 4 stalls per 100 m², and submits that there are currently only 8 stalls on the subject site. The adjoining site of 14,386 square feet is assessed under roll number 111162350 at \$366,500. It is the Complainant's contention that the adjoining site provides the parking for the current business operation. Therefore they should be treated as though they were one property, not two. The capitalized subject's net income reflects the value of both lots. This is similar to numerous other properties, 53 identified, where their assessments have been reduced to \$750 because they are required parking lands for adjoining business.

The Complainant's request is for the subject's assessment to be reduced to \$1,923,500. Thus the two parcels together would reflect a value of \$2,290,000.

The Respondent submits that the 69 stall requirement for the subject development is in line with the City of Calgary's current by-law IP2007. However, when the subject's business development permit was issued in 1996 the parking calculations determined that 27 stalls were required and that 23 stalls were being provided on site and a deficiency of 4 stalls was concluded. (*Reference page 21 of respondent's disclosure*)

The Respondent states that the adjacent lot under roll number 111162350 provides for at least 40 parking stalls, far more than the additional requirement of 4 stalls.

The CARB was advised that an adjustment to the adjacent lot under roll number 111162350 was

made wherein only half the parcel's area was assigned with excess land rate of \$51.00 per square foot; more than adequately allowing for a shortfall of 4 stalls. The Respondent requested confirmation of the assessment.

Issue:

Should the amount of \$366,500, the equivalent of the adjoining parcel's assessment (not under complaint), be deducted from the subject's assessment?

Board's Finding in Respect of the Issue:

The subject's assessment is not affected by a current shortfall in parking.

Reasons for the Decision:

The discrepancy between the parties lays in the determinations of the parking shortfall; the number of stalls required if a development or redevelopment were trying to meet the current parking by-law requirements or the requirements in place when the subject's development permit and current use was granted.

Regardless of the way in which the parking shortfall is recognized, the CARB is also satisfied that the identified shortfall of 4 stalls has been recognized as an allowance to the adjacent parcel's assessment.

The CARB notes that two photographs provided between pages 23 and 24 of the complainant's submission were not included in the disclosure prior to the hearing and were not considered in the CARB's deliberations.

It is assumed that the current assessment reflects the current highest and best use of the property and that the value of the subject is being measured by its capitalized income. The CARB notes that an owner has the right to choose how they may want to use their property. In the subject's case the owner can choose to use the basement space as parking or storage; either way the assessment is to reflect the conditions and characteristics of the property as of December 31 of the assessment year.

Decision:

The assessment is hereby confirmed at \$2,290,000.

DATED AT THE CITY OF CALGARY THIS 19th DAY OF July 2010.



for
D. Marchand
Presiding Officer

DM/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.*