

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaints 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:

C. Griffin, PRESIDING OFFICER

K. Kelly, MEMBER

A. Zindler, MEMBER

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

ROLL NUMBER:	066017708
LOCATION ADDRESS:	2402 – 10th Avenue SW
FILE NUMBER:	59953
ASSESSMENTS:	\$ 3,270,000

This complaint was heard on the 12th day of August, 2010 at the office of the Assessment Review Board located at 3rd Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- *B. Bickford*

Appeared on behalf of the Respondent:

- *D. Grandbois*

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

Not Applicable

Property Description:

The subject property is an improved industrial property that has an office extension and is located in the west end of that area of the City commonly referred to as Beltline/Sunalta West. The improvements date to 1954 and are classified, by the Assessor, as being C and D class. The D class component of the property contains 4,750 Sq. Ft. of space while the Class component contains 7,859 Sq. Ft. of space. The property abuts the main line of the C.P. railway.

Issues:

1. The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Alberta Regulation 220/2004.
2. The use, quality and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirement of Section 289 (2) of the Municipal Government Act.
3. The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.
4. The classification of the subject premise is neither fair, equitable, nor correct.
5. The assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties..
6. The assessment of the subject property is in excess of its market value for assessment purposes.
7. The assessed capitalization rate is incorrect and should be increased to 10%.
8. The assessed vacancy allowance applied to the subject property should be increased to 10%.
9. The assessed rental rates are not derived from similar property types.
10. The municipality has incorrectly calculated the assessable area and dimensions of the subject property.

Complainant's Requested Value: \$1,920,000.

Complainant's Position:

With regard to their specific issues the Complainant position is as follows:

1. The Complainant submits the assessing authority has not established the 2010 assessed value for the subject property in a consistent manner with other income generating properties and on that basis has not adhered to the mandatory requirements of Section 293(1).
2. The Complainant maintains that the subject property is a combined warehouse/office use and that use was in place as of the Condition Date and continues to be in use for the 2010 taxation year. The Assessor, having valued the property as vacant land has not adhered to the requirements of Section 289(2).
3. The Complainant referred to *Assessor for Area 09 (Vancouver) v. Bramalea Ltd. (1990) C.A.V. 00992 (Victoria Registry)*, in support of this issue.
4. The Complainant submits that while the subject property was and continues to be a functioning warehouse the Assessor has, by valuing the property as vacant land, chosen to reflect a subjective perception of what the subject might become in the future.

5. The Complainant submitted evidence relating to the assessment of the adjacent property, 2408 – 10th Avenue SW, which is a 17,787 Sq. Ft. improved office warehouse property and which the Assessor has valued on the basis of the Income Approach with a resulting assessment of \$2,720,000 which the Complainant points out equates to approximately \$153/Sq. Ft. of building area.
6. The Complainant submits that in valuing the subject property as vacant land the Assessor has overstated the value of the subject property. Additionally, the Complainant suggested that the sale of 2450 – 10th Ave. SW, a vacant land parcel that was purchased by the City of Calgary at a rate of \$85/Sq. Ft. for LRT expansion was purchased with the City being under abnormal pressure to complete said purchase.
7. 8. & 9. While the Complainant did submit a value estimate for the subject property based on the Income Approach, the Assessor did not. As a result no specific evidence or argument was submitted by the Complainant relating to these issues and/or how the Assessor had dealt with same.
10. The Complainant introduced no specific evidence or argument relating to this issue.

Respondent's Position:

The Respondent submits that the properties in the immediate vicinity of the subject property have been assessed on the basis of their land value or the value as derived through application of the Income Approach, whichever is the higher, and that this is in keeping with the established Principles of Highest & Best Use. In the case of the subject property the Assessor maintains that the basic land value exceeds the value as derived through application of the Income Approach using the established typical parameters for this area. The Assessor also maintained that the adjacent properties were treated in a similar manner but that in the case of the adjacent property (2408 – 10th Ave. SW) the value as derived through application of the Income Approach exceeded that of the bare land value. The Assessor maintains that the minimum value of any of the adjacent properties must be the land value but that does not prevent the value from being higher should conditions so warrant.

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

1. Section 293(1) of the M.G.A. relates to the Duties of Assessors and it stipulates that the Assessor must, in a fair and equitable manner,
 - (a) Apply the valuation and other standards set out in the regulations, and
 - (b) Follow the procedures set out in the regulations.Alberta Regulation 220/2004 states in Part 1 Subsection 5(1)(b) the valuation standard for other improvements is, market value.

The CARB notes that the Assessor acknowledges that the subject property is improved and that those improvements generate income; however, the income generated is not sufficient to create a value higher than the estimated bare land value. This does not contravene Section 293(1) nor does it contravene the Regulations.

2. Section 289(2) stipulates that 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.

The CARB notes that the while the referenced Section 289(2) does stipulate that the characteristics and physical condition of the property must be reflected in the assessment, that does not stipulate that those characteristics and physical conditions necessarily have value.

3. The Board agrees with this assertion, assuming there is evidence to warrant a reduction.
4. The Complainant provided no evidence or argument to support this contention so the Board did not give this matter consideration.
5. The Respondent provided evidence relating to four (4) adjacent properties which, improved or not, are assessed on the basis of their land value, just as the subject has been assessed. Additionally, the Respondent argued that the fact that the adjacent building had an assessment/Sq. ft. of building area that is significantly less than the assessment per square foot of building area of the subject property is due in large part to the fact that the adjacent building is significantly larger than the subject building so it should come as no surprise that the assessment/Sq. Ft. is lower. Based upon this evidence the CARB is not convinced that the Complainant's assertion that "the assessment of the subject property is not fair and equitable considering the assessed value and assessment classification of comparable properties" is correct. This argument of the Complainant fails.
6. The Complainant bases their assertion that the assessment of the subject property is in excess of its market value for assessment purposes on their application of the Income Approach to Value. In application of their Income Approach the Complainant has applied the same typical inputs that would have been applied by the Assessor and derived a value estimate of \$1,920,000. The Assessor acknowledged that the inputs applied by the Complainant were essentially the same as those utilized by the assessing authority for warehouse/office type properties in the vicinity of the subject property. The Assessor went on to say that the value derived through application of the Income Approach, as applied by the Complainant was less than the bare land value estimated for the subject property and that is precisely why the land value has been applied. The reasoning of the Assessor is clear to the CARB and it is based upon well founded valuation theory. If the improvements to a given property are of such an age or design or other influence that results in that property being incapable of producing a capitalized income value that exceeds the established land value, then the land value represents the market value of the property.
- 7., 8., 9. & 10. The Assessor did not apply the Income Approach to Value to derive their estimate as to the assessable market value of the property so it is meaningless for the Complainant to argue that the inputs applied were incorrect.

Board's Decision:

The assessment is confirmed at \$3,270,000.

DATED AT THE CITY OF CALGARY THIS 23rd DAY OF AUGUST 2010.


C. J. GRIFFIN
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.*