

**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 Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

*H. Kim, PRESIDING OFFICER
J. Rankin, MEMBER
E. Reuther, 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 NUMBERS | LOCATION ADDRESSES | HEARING NUMBERS | ASSESSMENTS |
|-----------------|---------------------|--------------------|-------------|
| 090059502 | 3629 Macleod Tr. SW | 56351 | 337,500 |
| 090059601 | 3625 Macleod Tr. SW | 56355 | 337,000 |
| 090059700 | 3623 Macleod Tr. SW | 56358 | 337,000 |
| 111096707 | 517 67 Ave SW | 56422 | 1,550,000 |
| 111184206 | 612 67 Ave SW | 56431 | 6,400,000 |
| 111180303 | 7370 4A St SW | 58923 | 1,880,000 |

This complaint was heard on the 30th day of August, 2010 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Property Description:

The subject complaints are of vacant parcels along Macleod Trail South with varying parcel sizes, zonings and influences. They are all assessed based on vacant land at market value using a base rate of \$85 per square foot. Influences applied to some of the parcels are +5% Corner Lot (CRL), -25% Topography (TOP), and -25% Limited Access (ACC). Traffic influences (TRM, TRE, and ACD) are coded but do not have a percent influence applied. Details of each parcel are as follows (from the 2010 Non-Residential Vacant Land Summary for each parcel):

| Roll No. | Address | Area (SF) | Influences | % Adj. | Zoning |
|-----------|---------------------|-----------|-------------|--------|--------|
| 090059502 | 3629 Macleod Tr. SW | 5,492 | TOP TRM ACD | -25 | C-COR2 |
| 090059601 | 3625 Macleod Tr. SW | 5,492 | TOP TRM ACD | -25 | C-COR2 |
| 090059700 | 3623 Macleod Tr. SW | 5,492 | TOP TRM ACD | -25 | C-COR2 |
| 111096707 | 517 67 Ave SW | 18,287 | | | C-COR3 |
| 111184206 | 612 67 Ave SW | 71,798 | TRE CRL | +5 | C-COR3 |
| 111180303 | 7370 4A St SW | 27,772 | CRL ACC | -20 | C-COR3 |

Issues:

The Complainant identified several issues on the Complaint forms, but at the hearing the two issues argued and considered were:

1. Does the base land rate applied in the assessments reflect market value at July 1, 2009?
2. Are the parcels assessed equitably with other similar properties in the area?

Complainant's Requested Values:

| ROLL NUMBERS | LOCATION ADDRESSES | HEARING NUMBERS | REQUESTED ASSESSMENTS ORIGINAL | REVISED |
|--------------|---------------------|-----------------|--------------------------------|-----------|
| 090059502 | 3629 Macleod Tr. SW | 56351 | 240,000 | 206,000 |
| 090059601 | 3625 Macleod Tr. SW | 56355 | 240,000 | 205,000 |
| 090059700 | 3623 Macleod Tr. SW | 56358 | 240,000 | 205,000 |
| 111096707 | 517 67 Ave SW | 56422 | 1,200,000 | 914,000 |
| 111184206 | 612 67 Ave SW | 56431 | 5,000,000 | 3,589,000 |
| 111180303 | 7370 4A St SW | 58923 | 1,200,000 | 1,110,000 |

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

Issue 1: Market Value

Complainant's Position

There were no sales of vacant C-COR land on Macleod Trail South in the relevant time period. The City's base land value of \$85 per square foot was derived from improved sales that were deemed to be land value transactions. An analysis of the sales that occurred does not support a market rate of \$85. The Complainant presented four sales of properties with low site

coverage that occurred between March 2008 and November 2009:

| # | Address | Property use | Bldg Size | Land Area (SF) | Sale Price | Sale Date | Rate/SF |
|----|----------------------|------------------------|-----------|----------------|------------|-----------|---------|
| C1 | 4001-4007 Macleod Tr | Retail, gas bar (7/11) | 8,627 | 58,806 | 3,500,000 | Mar-08 | 59.52 |
| C2 | 6808 Macleod Tr | Mr. Lube, restaurant | 8,958 | 44,866 | 1,800,000 | May-08 | 40.12 |
| C3 | 9950 Macleod Tr | Multi-tenant retail | 54,194 | 194,277 | 13,800,000 | Sep-08 | 71.03 |
| C4 | 7212 Macleod Tr | Former MacDonalds | 6,819 | 44,866 | 2,900,000 | Nov-09 | 64.64 |

The sales support a base land value rate of between \$40 and \$70 per square foot. Values declined between the sale dates and the valuation date of July 1, 2009. Sale # 4 is post-facto; however values were flat between July and November 2009. The requested value is \$50/SF.

Respondent's Position

C-COR land city-wide is assessed at \$107/SF for the first 10,000 square feet and \$17/SF for the balance. There is no distinction between C-COR1, 2 and 3. Macleod Trail was analyzed separately. There was one vacant land sale, at 8306 Horton Road at \$100/SF in November 2008 notwithstanding the Complainant's position that there were none, and the Complainant did not present all of the sales on Macleod Trail in the relevant time period. The sale at 6808 Macleod Trail was not an arms length sale. In addition to the ones presented by the Complainant, the following sales occurred on Macleod Trail:

| # | Address | Property use | Land Area (SF) | Sale Price | Sale Date | Rate/SF |
|----|---------------------|----------------|----------------|------------|-----------|---------|
| R1 | 5307A Macleod Tr | Hotel | 44,431 | 5,500,000 | May-08 | 124 |
| R2 | 5720A Macleod Tr | Office, retail | 31,363 | 3,500,000 | Nov-09 | 112 |
| R3 | 8306 Horton Road SW | Vacant | 200,865 | 20,100,000 | Nov-08 | 100 |
| R4 | 3911 Macleod Tr | Auto sales | 31,860 | 3,209,000 | May-08 | 101 |
| R5 | 4715 Macleod Tr | Car wash | 28,266 | 3,430,000 | Jan-08 | 121 |

There were not enough sales to analyze whether zoning affected the sale price, but it did not appear to be the case, therefore the land rates were not adjusted based on zoning. The Respondent recognizes that some of the sales need to be time adjusted, however there were not enough sales on Macleod Trail South to determine a time adjustment, so the land rates in the Beltline and Downtown were considered, as there was some comparability to Macleod Trail rates in those areas. The 2010 assessments compared to 2009 for the Downtown and Beltline declined 11.4% and 20.5% respectively, therefore Macleod Trail South land rates were reduced by 15%, the average of the two. Unsold listings are not market value, but can be an indicator of value. The Respondent referred to several listings on Macleod Trail with asking rates per square foot of \$100 to \$230. On balance these also support the assessment.

Decision and Reasons:

The Board did not agree that any conclusion could be drawn from the asking prices of unsold listings, other than the market value is lower than the asking price. The Board reviewed the sales presented, and determined that some of the Respondent's sales had substantial improvements and were not comparable. Sale R1 is a 50-room hotel, sale R2 has 28,566 SF building area on two levels, and sale R5 had a 12,516 SF car wash. The Respondent considers these to be land value sales because they sold for more than the capitalized income stream; however the Board does not agree that it necessarily follows the sale prices represented the

vacant land values. Sale R3 drove the vacant land values for the 2009 and 2010 assessments, but on reviewing the details of the sale and the approved development permit, the Board is of the opinion that the sale price reflected not only the value of the land but also a project in its final planning stages. Further, the Complainant stated the Direct Control zoning on that parcel allowed substantially higher density than what would be permitted for the subject parcels. While the Respondent does not adjust for density or location along Macleod Trail, the Board was persuaded by the Complainant that such factors would affect the market value.

Accepting the Respondent's position that C2 is not a valid sale, the Board found that sales C1, C3, C4 and R4 were more likely to have reflected vacant land value. The average of the 3 sales in 2008 is \$77.18/SF. The Respondent's time adjustment of -15% applied to this value is \$65.60/SF. This is supported by the November 2009 sale at \$64.64/SF which, while post facto, supports the conclusion that can be drawn from the other sales. Therefore the Board finds that the market value of vacant land on Macleod Trail South at the valuation date was in the order of \$65/SF and not \$85/SF as used in the assessment.

Issue 2: Equity

Complainant's Position

The Complainant analyzed the assessments of 72 improved properties on Macleod Trail between 36th and 96th Avenues and compared them to their parcel sizes. The assessments per square foot ranged from \$16 to \$81/SF of land area, with a mean of \$51 and a median of \$49. The value of a property cannot be less than the value of the land on which it is located; therefore the assessments of vacant parcels are inequitable with other parcels in the municipality. This position is further illustrated by the assessments of the sales that were used in the market value analysis:

| # | Address | Land Area (SF) | Sale Price | Sale Date | Sale Price/SF | 2010 Assessment/SF |
|----|----------------------|----------------|------------|-----------|---------------|--------------------|
| C1 | 4001-4007 Macleod Tr | 58,806 | 3,500,000 | Mar-08 | 59.52 | 44.00 |
| C2 | 6808 Macleod Tr | 44,866 | 1,800,000 | May-08 | 40.12 | 41.00 |
| C3 | 9950 Macleod Tr | 194,277 | 13,800,000 | Sep-08 | 71.03 | 39.00 |
| C4 | 7212 Macleod Tr | 44,866 | 2,900,000 | Nov-09 | 64.64 | 47.00 |

Recent Board decisions reducing assessments were presented to support the Complainant's position that the base rate should be reduced to maintain equity. The comparables support a reduction of the base rate to \$50/SF.

Respondent's Position

In preparing the assessment, properties were stratified into classes. Vacant land was assessed based on sales comparables and income producing property was assessed on its capitalized income stream. Land values have increased drastically such that some income producing properties have vacant land as their highest and best use. Assessment on the income stream has caused some of the income-producing properties to be undervalued.

The Respondent presented 14 vacant land assessments along Macleod Trail to demonstrate that all vacant land is assessed at the \$85/SF base rate and therefore are equitably assessed with each other.

Decision and Reasons:

The Act requires the assessment to be equitable:

- 293(1) In preparing an assessment, the assessor must, in a fair and equitable manner,
 (a) apply the valuation and other standards set out in the regulations, ...

In order to determine the similarity of the Complainant's equity comparables, the Board considered the assessments per square foot of land looking at properties in the vicinity of the parcels under complainant and in the same range of parcel size:

Properties under 15,000 SF land area near 3623-3629 Macleod Trail

| Roll # | Address | Land Area (SF) | Assessment | \$/SF Land |
|---------------|-----------------|----------------|------------|------------|
| 090077801 | 4002 Macleod Tr | 11,932 | 684,500 | 57 |
| 090032103 | 4101 Macleod Tr | 14,349 | 625,000 | 44 |
| 090077504 | 4108 Macleod Tr | 11,485 | 402,500 | 35 |
| 090035403 | 4701 Macleod Tr | 11,438 | 642,500 | 56 |
| 090048497 | 4812 Macleod Tr | 12,427 | 888,000 | 71 |
| 101022408 | 5316 Macleod Tr | 11,945 | 598,000 | 50 |
| Mean | | | | 52 |
| Median | | | | 53 |

Properties between 11,000 and 35,000 SF land area near 67 Ave and Macleod Trail

| Roll # | Address | Land Area (SF) | Assessment | \$/SF Land |
|---------------|-----------------|----------------|------------|------------|
| 101028504 | 5702 Macleod Tr | 16,749 | 883,500 | 53 |
| 101029406 | 5808 Macleod Tr | 26,650 | 1,860,000 | 70 |
| 101046407 | 6606 Macleod Tr | 31,432 | 2,380,000 | 76 |
| 101048308 | 6666 Macleod Tr | 26,372 | 948,000 | 36 |
| 111035101 | 7007 Macleod Tr | 19,347 | 916,000 | 47 |
| 111177200 | 7215 Macleod Tr | 33,762 | 1,280,000 | 38 |
| 111162202 | 7425 Macleod Tr | 23,980 | 1,910,000 | 80 |
| 200790301 | 8455 Macleod Tr | 27,987 | 594,500 | 21 |
| 200790319 | 8508 Macleod Tr | 32,293 | 1,300,000 | 40 |
| Mean | | | | 51 |
| Median | | | | 47 |

Properties between 44,000 and 120,000 SF land area near 67 Ave and Macleod Trail

| Roll # | Address | Land Area (SF) | Assessment | \$/SF Land |
|---------------|-----------------|----------------|------------|------------|
| 112001508 | 6712 Macleod Tr | 45,017 | 2,590,000 | 58 |
| 112001607 | 6808 Macleod Tr | 45,007 | 2,090,000 | 46 |
| 112105408 | 7004 Macleod Tr | 67,293 | 4,430,000 | 66 |
| 112105903 | 7104 Macleod Tr | 112,487 | 7,870,000 | 70 |
| 011177002 | 7109 Macleod Tr | 44,847 | 2,300,000 | 51 |
| 112106604 | 7212 Macleod Tr | 44,977 | 2,130,000 | 47 |
| 112108907 | 7400 Macleod Tr | 118,299 | 8,360,000 | 71 |
| 112108808 | 7516 Macleod Tr | 61,787 | 1,690,000 | 27 |
| 112060306 | 7520 Macleod Tr | 73,950 | 3,430,000 | 46 |
| 112060405 | 7730 Macleod Tr | 44,059 | 1,870,000 | 42 |
| 112060504 | 7810 Macleod Tr | 79,399 | 1,700,000 | 21 |
| 1124063819 | 9223 Macleod Tr | 64,370 | 2,390,000 | 37 |
| 1124188806 | 9609 Macleod Tr | 73,721 | 1,160,000 | 16 |
| Mean | | | | 46 |
| Median | | | | 46 |

In every range of parcel size the improved properties have values per square foot of land in the range of the \$50 requested by the Complainant. The minimum value of the fee simple estate in an income-producing property is its vacant land value. The Complainant demonstrated inequity between neighbouring properties in the municipality. The Board does not agree that stratification into classes makes it acceptable for income producing properties to be assessed at a level far below vacant land.

Fairness and equity as a fundamental principle of municipal taxation was first established in *Jonas v. Gilbert* (1881, Supreme Court of Canada) and further detailed in *Assessor for Area 9 – Vancouver v. Bramalea Limited* (1990 B.C. Court of Appeal). It is clearly articulated in *Strathcona No. 20 (County) v. Alberta (Assessment Appeal Board)* (1995 Alberta Court of Appeal):

The foregoing provisions of the Municipal Taxation Act reflect the two fundamental principles of municipal taxation in Canada, firstly, that property be assessed on the common basis of fair actual value so that the cost of municipal government will fairly be borne by taxpayers inter se in proportion to the relative values of their assessable properties and, secondly, that the assessor shall determine the fair actual value in a manner that is fair and equitable with the level of value prescribed for use in determining the fair actual value of other like improvements in the municipality.

The Board finds that to preserve equity, the base land rate should be reduced to \$50/SF.

Board's Decision:

Sales comparison supports market value of vacant land at \$65/SF. Equity with similar properties supports a rate of \$50/SF. Both market value and equity support a reduction, however the Board is of the opinion that the direction to be taken from the jurisprudence supports the application of the lower rate.

Therefore, the complaints are allowed, and the assessments reduced as follows based on \$50/SF, with influence adjustments (as applied and not under dispute):

| Roll No. | Address | Area (SF) | Value @ \$50/SF | % Adj. | Assessment |
|-----------|---------------------|-----------|-----------------|--------|------------|
| 090059502 | 3629 Macleod Tr. SW | 5,492 | 274,600 | -25 | 206,000 |
| 090059601 | 3625 Macleod Tr. SW | 5,492 | 274,600 | -25 | 206,000 |
| 090059700 | 3623 Macleod Tr. SW | 5,492 | 274,600 | -25 | 206,000 |
| 111096707 | 517 67 Ave SW | 18,287 | 914,350 | | 914,000 |
| 111184206 | 612 67 Ave SW | 71,798 | 3,589,900 | +5 | 3,760,000 |
| 111180303 | 7370 4A St SW | 27,772 | 1,388,600 | -20 | 1,110,000 |

DATED AT THE CITY OF CALGARY THIS 9th DAY OF SEPTEMBER 2010.



Presiding Officer

APPENDIX "A"**DOCUMENTS RECEIVED AND CONSIDERED BY THE BOARD:**

| NO. | ITEM |
|------------|---|
| C1 | Complainant Form |
| C2 | Complainant's Submission (specific for each parcel) |
| C3 | Sales details, equity comparables and argument |
| C4 | Complainant's rebuttal of Respondent's submission |
| C5 | Board Order ARB 0958/2010 August 4, 2010 |
| C6 | Board Order ARB 0867/2010 July 22, 2010 |
| R1 | Respondent's Submission |

APPENDIX 'B'**ORAL REPRESENTATIONS**

| PERSON APPEARING | CAPACITY |
|-------------------------|---------------------------------------|
| Reid Hutchinson | Altus Group Limited, Complainant |
| Darryl Genereux | Altus Group Limited, Complainant |
| Elessio D'Altorio | Assessor, City of Calgary, Respondent |

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.*