

**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:

R. Mowbrey, PRESIDING OFFICE

J. Rankin, MEMBER

S. Rourke, 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: 100013101

LOCATION ADDRESS: 6204 6A ST SE

HEARING NUMBER: 59761

ASSESSMENT: \$5,880,000

This complaint was heard on the 20th day of August, 2010 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 9.

Appeared on behalf of the Complainant:

- R. Worthington

Appeared on behalf of the Respondent:

- R. Ford

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

There were no procedural or jurisdictional matters.

Upon questioning by the Presiding Officer, the parties present indicated they had no objection to the composition of the Board. In addition, the Board indicated they had no bias on this file.

Property Description:

The subject property is a single multi tenanted building constructed in 1972 and located in the Burns Industrial Sub-division. The building is a single story with a mezzanine and a net rentable area of 39,193 SF.

Issues:

1. Sale of the subject property in December 2009.
2. Income approach to value versus direct sales.

Complainant's Requested Value:

\$3,825,000

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

1. Sale of the subject property.

The Complainant presented evidence that the sale of the subject property in December 2009 should not be considered post facto. The subject property must show the characteristics and physical condition as at December 31st of the current year and the subject property was sold in the current year. The fact that the subject property was sold in the base year should not make the subject property post facto. The Complainant gave compelling reasons to demonstrate that other Boards have allowed post facto sales. (Court of Queen's Bench Citation: 697604 Alberta Ltd. v. Calgary (City of), 2005 ABQB 512). (Exhibit C-3 pages 6/7) Quote" It is for that reason that the recent free sale of a subject property is generally accepted as the best means of establishing the market value of that property.....I think that generally speaking the recent sale price, if available as it was in this case, is in law and, in common sense, the most realistic and most reliable method of establishing

market value.” In addition, the Complainant advised the Board that the subject property had been on the market for an extraordinary amount of time and due diligence had been in the works long before the December 15th 2009 sale. The Complainant was adamant that the post facto sale of the subject property should be allowed and that the market value should be the selling price of the subject property, namely \$3,825,000. The Complainant further argued that the City even uses post facto sales in the model, although the Respondent says that the City does not use post facto sales. (Exhibit C-2 page 59—sale 07 July 09)

The Respondent advised the Board the City cannot use post facto sales for their mass appraisal process and model. The Respondent stated that MRAT, section 3 states, “Any assessment prepared with the Act must be an estimate of the value of a property on July 1st of the assessment year. (Exhibit R-1 pages 3/4) The Respondent cited authorities (R-1 pages 21/22) to state that post facto sales should not be allowed. Quote “6. The assessment equity rationale, as to why post facto information should not be used to prepare an assessment, is that it would create a scenario where assessments are prepared for some taxpayers using market indicator information up to and including the valuation date, and other taxpayers using post facto market indicator information. This does not meet any reasonable standard for assessment equity.”

The Board decided not to place a great deal of weight on the post facto sale of the subject property. The Board notes the authorities cited by the Complainant specifically mentioned the recent free sale of the subject property and certainly, the July 18th sale mentioned in the Board Order meets this test. The Board does not consider the sale in December a recent sale. In addition, the sale was not time adjusted back to the valuation date of July 1st. While the Complainant did give some intuitive oral evidence, the Board did not place a great deal of weight on this argument. The Respondent's evidence (Exhibit R-1 page 21) notes, “it is acceptable to utilize as a measure of valuation in the dynamically economic market at the material time in Calgary, so long as it is time adjusted.”

2. Income approach to value versus direct sales.

The Complainant advised the Board that the income approach is an acceptable approach to value. (Exhibit C-1 pages 11-16) The Complainant further stated the income approach is well accepted by the market place and by the courts. The Complainant argued that the economy was stable in 2007 and 2008, but was anything but stable in 2009. The Complainant noted the world economy went into a spiral in 2009 and that includes the local economy. (Exhibit C-1 pages 17/18).

The Complainant gave evidence to the Board regarding the income approach to value. The Complainant used an overall vacancy rate of 5%, a 7.5% cap rate for newer tenanted properties (1995 and newer) and an 8% cap rate for older tenanted properties. (1994 and older) When utilizing the rental rate of 7.08 PSF and excess land of \$248,987, the value comes to \$3,544,139 including excess land. This works out to \$90.43 PSF. The excess land is valued at \$300,000 / acre and taken from the City's industrial rates on land. (Exhibit C-1 pages 19-21).

The Complainant presented three sales to the Board showing the sales approach to value. The three sales had ASR's of 1.06, 1.18, and 0.81. While the Complainant stated the sales falls outside the regulations, the sales are valid in the central corridor and are still considered good comparables to the subject property. The median for the three sales is \$106.28 PSF. When utilizing the figure of \$1.06 PSF and adjusting for excess land the truncated value comes to \$4,400,000. (C-1 pages 22/23).

The Respondent advised the Board that the sales prices of comparable properties are usually considered the best evidence of market value. Consequently, the sales comparison approach is the

preferred method when sales data are available. The Respondent gave 5 industrial sales comparables to the subject property. (Exhibit R-1 page 16) The sales were all time adjusted to the valuation date of July 1st. The Respondent stated the sales clearly demonstrate that the assessment for the subject property is fair, current and equitable.

The Board was not persuaded by the Respondent's sales comparables. The first four were single tenant and only the last one was multi tenant. Four of the five comparables were not in the same quadrant as the subject property.

The Board thought the Complainant's comparables were more compelling as they were all located in the same quadrant as the subject property. When utilizing the median of the comparables, the truncated value came out to \$4,400,000 including the land adjustment.

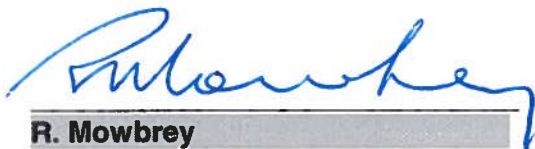
The Board noted the asking price of the subject property was \$4,400,000 on July 1st, the valuation date. With an economy that is in a downward spiral, the Board suggests that agents would list the property at market value. The \$4,400,000 asking price signals what the owner of the property believes the property is worth at the time of valuation.

The Board accepts the Complainant's direct sales comparison of a truncated value of \$4,400,000. Although the Complainant admitted the sales were not the best, when verified by the asking price of exactly \$4,400,000 on the valuation date of July 1st makes a very compelling rationale for the Board's decision.

Board's Decision:

The assessment of the subject property is revised to \$4,400,000.

DATED AT THE CITY OF CALGARY THIS 3rd DAY OF SEPTEMBER 2010



R. Mowbrey
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.*

Exhibits

C-1 Complainant's evidence 37 pages

C-2 Complainant's evidence 595 pages—black binder

C-3 Complainant's appendix 50 pages

R-1 Respondent's evidence 22 pages