

**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, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

W. Garten, PRESIDING OFFICER

B. Jerchel, MEMBER

A. Blake, MEMBER

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

ROLL NUMBER:	058212903
LOCATION ADDRESS:	255 Barklay Parade SW
HEARING NUMBER:	59933
ASSESSMENT:	\$73,830,000

This complaint was heard on the 24th day of August, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 7.

Appeared on behalf of the Complainant:

- D. Hamilton Agent, Altus Group
- P. Milligan Agent, Altus Group

Appeared on behalf of the Respondent:

- S. Cook Assessor, The City of Calgary
- P. Frank Lawyer, The City of Calgary
- J. Toogood Assessor, The City of Calgary

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

The Board derives its authority to make this decision under Part 11 of the *Municipal Government Act* (MGA).

1. The Respondent objected to the Complainant's rebuttal, as it was considered new evidence provided by the Complainant.

The Complainant claimed that it was responsive, brief and appropriately before the Board.

The Complainant subsequently decided to forgo the rebuttal.

The Board agreed to allow the withdrawal of the rebuttal.

2. It was requested that the order of the hearing be based on a July 9, 2010 e-mail between P. Milligan and D. Hamilton. This was agreed to by S. Cook and P. Frank. The list included 11 hotels of which one hotel appeal was subsequently withdrawn. The Board agreed to allow the hearing to proceed based on this list.
3. A request was made by P. Frank to swear in all witnesses. D. Hamilton, S. Cook and J. Toogood were sworn in by the Board.

The Board proceeded to hear the merits of the complaint, as outlined below.

Property Description:

The subject property is a "Full Service" Hotel as described on Page 20 in the Hotel/Motel Assessment Guide - June 1998. The Hotel, the Sheraton Suites, has 323 rooms, a dining room of approximately 6,000 sq. ft., a lounge of approximately 2,160 sq. ft., a banquet area of

approximately 10,800 sq. ft., an indoor swimming pool, whirlpool and 115 parking spaces. The subject property is located in Downtown Calgary.

Issues:

The Complainant raised the matter that the assessment is in contravention with respect to Section 293 (Duties of Assessor) of the *Municipal Government Act* (MGA) and *Alberta Regulation 220/2004*.

The Complainant raised the matter that the assessment is in contravention with respect to Section 289(2) (Each assessment must reflect) of the *Municipal Government Act*.

The Complainant raised the matter that the Income Approach to Value is incorrect and should be adjusted by:

1. When calculating normalized income, a different weighting should be applied to 2006/07/08 to more closely reflect the actual income of 2009.

Complainant's Requested Value: \$60,000,000

Revised at Hearing to \$64,168,000 or alternate of \$70,377,000

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

Complainant's Position:

1. The Complainant submitted two (2) evidence packages marked as Exhibit C-3 (Grounds for Appeal) and Exhibit C-2 (Hotel/Motel Valuation Guide)

The Complainant argued that more weighting should be placed on the financial performance as of the valuation date (July 1, 2009) as per the requirements in Section 293 of the *Municipal Government Act*. The current weighting used by the City of Calgary is 20% - 2006, 30% - 2007, 50% - 2008 with no consideration given to 2009 income and expenses.

It was requested by the Complainant that the weighting should change to 30% - July 1, 2006 to June 30, 2007, 20% - July 1, 2007 to June 30, 2008, 50% - July 1, 2008 to June 30, 2009 in order to derive weighted financial performance to Valuation Date of July 1, 2009 (statement provided in C-3 Page 25) per *Matters Relating to Assessment and Taxation* (MRAT) Part 1 Section 3,

As an alternate requested value, the Complainant provided a second option using a weighting of 50% - 2006, 30% - 2007 and 20% - 2008 in order to derive weighted financial performance closer to the actual income and expenses of 2009.

The Complainant further brought to the Board's attention the Hotel/Motel Valuation Guide (used as a standard by Alberta Assessors) Section 3.4 "Full Service Hotels" and

Section 3.5 "Stabilized Income & Expense" / "Stabilized Data". It is the Assessor's discretion to weight the annual income and expenses over a three year period. The weighting can be changed "if the future income is expected to be more closely related to the most current (or any other) year, a higher weight can be assigned to this year".

The Complainant argued that the assessment does not reflect the financial information for 2009 that is available to the City of Calgary at the time when information is being collected by the City in August and September of each year.

Respondent's Position:

1. The Respondent submitted one (1) evidence package marked as Exhibit R-2 (Assessment Brief).

The Respondent accepts that income was trending down in 2009, however the financial data that the City of Calgary had at its disposal was to December 31, 2008. The weighting used by the City of Calgary has been changed since 2006 when it was 30% - 30% - 40%. Capturing income up to the prior calendar year has been the traditional way of collecting information for the purposes of calculating hotel assessments. Collection of Data for 2009 was completed in August and September of 2009 for the subject assessment year. This time schedule is consistent with previous years.

The Respondent claims that the information is always six months behind and as such the Complainant will receive the benefit of a lower assessment next year (2010). It was further explained that during years of large revenue growth, the hotel owners would benefit with this system of calculating assessed values based on a prior year's financial information.

Board's Decision:

1. The Board accepts the Complainant's evidence that the assessment does not reflect income data available to the City of Calgary for 2009.

The Board acknowledges Section 1 (n) defines Market Value as "the amount that a property, as defined in Section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer".

The Board acknowledges Section 293 (1) "In preparing an assessment, the assessor must, in a fair and equitable manner, (a) apply the valuation standards set out in the regulations, and (b) follow the procedures set out in the regulations."

The Board acknowledges Section 1 (f) defining "assessment year" as the year prior to the taxation year.

The Board acknowledges MRAT Part 1 Section 3 "Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year."

It was found that it is not in the Board's mandate to allow or consider arguments for prior years' assessments or arguments for assessments that may take place in the future. The Board is authorized to make a decision on the current year (2010) only.

The Board agrees that the utilization of information only up to December 31, 2008 does not reflect the current market conditions in Calgary as at July 1, 2009. Data that is six months old will not capture "Boom Years" or "Bust Years" as is the case in the current year 2009. Having a six month delay in data leaves the City of Calgary open for appeals when large fluctuations in income occur in the marketplace

In order to comply with the *Municipal Government Act*, the Board finds it necessary to adjust the calculation of the City of Calgary assessment on the subject property using financial data available up to and including June 30, 2009. The Board has adjusted the income data to reflect the July 1, 2009 Valuation Date as defined in MRAT Part 1 Section 3.

From the information provided to the Board on Page 25 of C-3, the Board has applied a weighting of 20% to the year ending June 30, 2007 Data, 30% to the year ending June 30, 2008 Data and 50% to the year ending June 30, 2009 Data.

The Weighting of 20%-30%-50% is consistent with historic practices and weights the most current year highest in the calculation of Normalized Income in order to better reflect current values.

The Board has found that the result of the new calculation is a new net assessable operating income of \$6,992,560.

It is the Board's decision that the assessment be reduced to \$64,873,000 (includes \$51,722,400 for leased City land) as reflected in the change in net operating income associated with the adjusted defined fiscal dates of 3 years to June 30, 2009 and in all other respects in issue the assessment is confirmed.

DATED AT THE CITY OF CALGARY THIS 27th DAY OF SEPTEMBER 2010.


W. Garten
Presiding Officer

CC: Owner

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.*