

**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:**

***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: 200177319**

**LOCATION ADDRESS: 700 Centre Street S.E**

**HEARING NUMBER: 59470**

**ASSESSMENT: \$ 96,330,000**

This complaint was heard on 24<sup>th</sup> 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 – Altus Group Representative*
- *P. Milligan – Altus Group Representative*

Appeared on behalf of the Respondent:

- *S. Cook – City of Calgary Representative*
- *P. Frank – City of Calgary Representative*
- *J. Toogood – City of Calgary Representative*

**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 the Respondent believed that the Complainant was bringing new evidence into the appeal at this late stage.

The Complainant claimed that the rebuttal was responsive, brief and appropriate 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 by the Complainant that the order of the hearing be based on a July 9, 2010 email between P. Milligan and D. Hamilton. This was agreed by the Respondent 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 The list included 11 hotels of which one hotel appeal was subsequently withdrawn.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 the Respondent P. Frank to swear in all witnesses. D. Hamilton, S. Cook and J. Toogood were sworn in.

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 Hyatt has 355 rooms, a lounge of approximately 2,583 sq. ft., a banquet area of approximately 20,721 sq. ft., a 160 space parking lot, an indoor swimming pool and exercise/health club. Catch Restaurant is leased to a third party. The hotel is attached to the new convention centre. 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 the Assessor) of the *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 *MGA*.

The Complainant raised the matter that the income approach to value is incorrect and should be adjusted by:

1. When calculating the 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:** \$80,000,000 Revised at Hearing to \$89,595,000

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

1. The Complainant submitted two evidence packages marked as Exhibit C-5 (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 *MGA*. The current weighting used by the City of Calgary is 20% - 2006, 30% - 2007, and 50% - 2008 with no consideration given to 2009 income and expenses.

It was requested by the Complainant that the weighting should change to 40% - 2006, 30% - 2007, and 30% - 2008 in order to derive a weighted financial performance closer to the actual income and expenses of 2009 (statement provided in C-5, page 24) since the valuation date is July 1, 2009 as per *Matters Relating to Assessment and Taxation* (MRAT), Part 1 Section 3.

The Complainant further brought to the Boards' attention the *Hotel/Motel Valuation Guide* (used as a standard by Alberta assessors) particularly Section 3.4 "Full Service Hotels" and Section 3.5 "Stabilized Income and Expense / Stabilized Data". It is the assessors' 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 evidence package marked as Exhibit R-4 (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 not 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 financial information for the purposes of calculating hotel assessments. Collecting 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, hotel owners would benefit from this system of calculating assessed values based on a prior years' financial information.

**Board's Decision:**

1. The Board accepts the Complainants' 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 stating "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 Boards' 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 *MGA*, the Board finds it necessary to adjust the calculation of the City of Calgary assessment on the subject property using the 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.

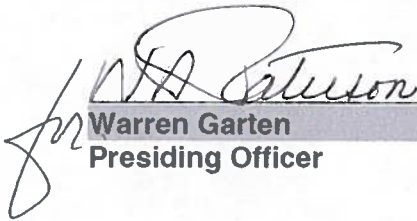
From the information provided to the Board on page 24 of C-5, the Board has decided to take 50% of 2006 plus 50% of 2007 data and has applied a weighting of 20% to that fiscal year. The Board has decided to take 50% of 2007 plus 50% of 2008 data and applied a weighting of 30% to that fiscal year. The Board has decided to take 50% of 2008 plus 50% of 2009 data and applied a weighting of 50% to that fiscal year.

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 conditions and values.

The Board has found that the results of the new calculation is a new net assessable operating income of \$10,303,927 and using the accepted capitalization rate of 10.5% provides an assessed value of \$98,132,000.

**It is the Boards' decision that the assessment be confirmed at \$96,330,000 as reflected in the change in net operating income associated with the adjusted defined fiscal dates of three years to June 30, 2009 and in all other respects in issue the assessment is confirmed.**

DATED AT THE CITY OF CALGARY THIS 24<sup>th</sup> DAY OF SEPTEMBER 2010.



Warren 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.*