

**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:

***Board Chair, W. Garten
Board Member 1, B. Jerchel
Board Member 2, A. Blake***

This is a complaint to the Calgary Composite 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: 757121801
LOCATION ADDRESS: 400 Midpark Way, S.E.
HEARING NUMBER: 57591
ASSESSMENT: \$12,040,000

This complaint was heard on 25th 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 and P. Milligan – Representing Altus Group Ltd.*

Appeared on behalf of the Respondent:

- S. Cook, P. Frank and J. Toogood – Representing 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*.

1. 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.

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

Complaint 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 e-mail between P. Milligan and D. Hamilton. This was agreed by the Respondent S. Cook and P. Frank. The list included 11 hotels of which 1 hotel appeal was subsequently withdrawn.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 by the Board.

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

Property Description:

The subject property is a "Limited Service" Hotel as described on page 20 in the Hotel/Motel Assessment Guide – June 1998. The Hotel, the Wingate Inn has 103 rooms, a water slide, swimming pool and free surface parking. Darby Arms restaurant is leased to a third party. The subject property is located in South 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)*, *Alberta Regulation 220/2004*, and *Matters Relating to Assessment and Taxation (MRAT)*.

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 weighing should be applied to

2006/07/08 to more closely reflect the actual income of 2009.

Complainant's Requested Value: \$9,600,000 Revised at Hearing to \$10,494,000.

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-10 (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 requirement in section 293 of the *Municipal Government Act*. The current weighting used by the City of Calgary is 50% - 2007, 50% - 2008. It was confirmed that there was an absence of information for 2006 and no consideration was given to 2009 income and expenses.

It was requested by the Complainant that the weighting should change to 20% - 2007, 30% - 2008, 35% - 2009 in order to derive weighted financial performance closer to the actual income and expenses of 2009 (statement provided in C-10, page 91) since Valuation Date is July 1, 2009 per MRAT Part 1 Section 3.

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 3 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-9 (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 purpose 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 the previous years.

Respondent claims that the information is always 6 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.

The Respondent confirmed that a request was made to the Owner of the subject for the 2006 financial information however no information was forwarded to the City of Calgary.

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) of MGA 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 year's 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 6 months old will not capture "Boom Years" or "Bust Years" as is the case in the current year 2009. Having a 6 month delay in data leaves the City of Calgary open for appeals when large fluctuations in income occur in the market place.

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 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 91 of C-10, the Board has decided to take 50% of 2007 plus 50% of 2008 Data and has applied a weighting of 40% to that fiscal year. The Board has decided to take 50% of 2008 plus 50% of 2009 Data and applied a weighting of 60% to that fiscal year. The Board could only weight two (2) full years due to lack of 2006 financial information.

The Weighting of 40% - 60% is consistent with some historic practices and weights the most current year highest is the calculation of Normalized Income in order to better reflect current conditions and values.

The new net assessable operating income is \$1,008,161 as a result of the new fiscal years as calculated by the Board.

It is the Board's decision that the assessment be reduced to \$10,595,000 (includes restaurant assessment of \$1,828,096) as reflected in the change in net operating income associated with the adjusted defined fiscal dates of 2 years to June 30, 2009 and in all other respects in issue the assessment is confirmed.

DATED AT THE CITY OF CALGARY THIS 24th 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.*