

**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 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:

<b>ROLL NUMBER:</b>	<b>068229301</b>
<b>LOCATION ADDRESS:</b>	<b>110 9 Avenue S.E.</b>
<b>HEARING NUMBER:</b>	<b>59446</b>
<b>ASSESSMENT:</b>	<b>\$53,160,000</b>

This complaint was heard on 23 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*

Appeared on behalf of the Respondent:

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

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 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 The list included 11 hotels of which 1 hotel appeal was subsequently withdrawn.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 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 "Full Service" Hotel as described on page 20 in the Hotel/Motel Assessment Guide - June 1998. The Hotel, the Marriott has 384 rooms, a dining room of approximately 5,000 S.F. with 128 seats, a lounge of approximately 1655 S.F. with 62 seats, a banquet area of approximately 4,500 S.F., an indoor swimming pool, whirlpool and 2 third party leases to Starbucks for 520 S.F. and a leased restaurant to Milestones. The subject property is located adjacent to the Old Convention Centre 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. Increase the expense allowance to the Food and Beverage Expense by \$340,189
2. 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:** \$43,000,000 Revised at Hearing to \$46,823,000

**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-1 (Grounds for Appeal) and Exhibit C-2 (Hotel/Motel Valuation Guide)

The Complainant requested that the full expense for Food and Beverage be included in the income calculation. The City had decreased the allowable expense by \$340,189. The City had allowed 40% above the Industry Norm of 59.1%. The total expense allowed was \$3,523,037.

The Complainant argued that the expense ratio of 90.7% was within 10% of the typical Calgary downtown full service hotels of 84.83%.

The Hotel/Motel Valuation Guide pages 28 and 29 recommends using actual expense if actual expense is within 10% of typical comparable expense.

The Complainant argued that the high ratio is due to competing restaurant (Milestones) in the hotel and as such the hotel restaurant is open only for breakfast and lunch resulting in higher percentage of expense to revenue. It was argued that dinner service has a high gross margin than Breakfast or Lunch service.

It was disclosed that the Marriott has a contract for the catering at the Old Convention Centre. However the Marriott uses a separate kitchen and claim to have separated out all income and expenses from the income and expenses submitted to the City of Calgary for purposes of the 2009 assessment.

In support of their argument the Complainant provided a chart of comparisons (C-1, page 20) with other major hotels in Downtown Calgary showing an average of 84.83%. This calculation included the Marriott Hotel ratio of 90.70%. The Complainant further

claimed that since the average is within 10% (actual 6.92%) of the industry norm, that the total expense should be allowed.

2. 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 50% -2006, 20% -2007, 30% -2008 in order to derive weighted financial performance closer to the actual income and expenses of 2009 (statement provided in C-1, page 22) 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 on August and September of each year.

#### **Respondent's Position:**

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

The Respondent provided a chart of industry norms (R-1, page 12) as provided by PFK Consulting where Alberta Full Service hotels show an average expense for Food and Beverage of 59.1 %. This annual report is utilized throughout Alberta in the calculation of assessments for the Hotel/Motel industry

The Respondent agrees that the norm of 59.1 % for the province is not reasonable for Full Service Downtown Hotels and as such the assessor has allowed a 40% increase over the industry norm. This amount converts to 82.74% of the Food and Beverage revenue. The Respondent was dissatisfied with the information provided by the Marriott Hotel in support of their requested expense totalling 90.7% of revenue and as a result did not allow the Food and Beverage expense in its entirety. This was due to the suspected spill over of expenses from the cost of the catering contract for the Convention Centre, to the normal food and beverage operation of the Hotel.

2. 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. 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.

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 (2011). 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 agrees with both the Complainant and the Respondent that the industry average of 59.1 % used by the City of Calgary is not a true comparison of industry average for Food and Beverage expense for a Full Service Hotel in Downtown Calgary.

The Board agrees that a better comparison is the chart of comparable Hotels in Downtown Calgary as provided in the evidence package (C-1 page 20) by the Complainant.

The Board could not accept the calculation by the Complainant as the Marriott was included in the average and has skewed the percentage calculation due to the limited number (5) of Hotels in the model. The Board eliminated the Marriott from the model and calculated an industry norm of 79.78%. The Food and Beverage expense request by the Complainant of 90.7% is 13.7% above the industry norm (for downtown Calgary) as calculated by the Board. As a further test the Board eliminated the high Food and Beverage expense (Marriott 90.7%) and the low Food and Beverage expense (Sheraton 76.5%) providing a tested average of 80.87% resulting in a difference of 12.2% above this calculated norm.

The Board agrees with the Respondent and confirms the Food and Beverage expense utilized by the City of Calgary in the subject assessment at \$3,523,037 a deduction of \$340,189 or 82.74% of the Food and Beverage revenue.

2. 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 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 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 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 22 of C-I, 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. Since 2009 fixed expenses were not available, the Board utilized the existing 2006, 2007 and 2008 expenses with the same weighting formula.

The new net assessable operating income is \$5,529,361 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 \$52,660,000 to reflect 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 24<sup>th</sup> DAY OF SEPTEMBER 2010.

  
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**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.*