

**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-26.1, Section 460(4).

**between:**

***Altus Group Limited, COMPLAINANT***

**and**

***The City Of Calgary, RESPONDENT***

**before:**

***W. Kipp, Presiding Officer  
K. Coolidge, Board Member  
D. Pollard, Board 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: 201314929**

**LOCATION ADDRESS: 100, 5126 – 126 Avenue SE, Calgary AB**

**HEARING NUMBER: 56058**

**ASSESSMENT: \$3,600,000**

This complaint was heard on the 17<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 8.

Appeared on behalf of the Complainant:

- D. Mewha

Appeared on behalf of the Respondent:

- K. Gardiner

**Property Description:**

A multi-tenant industrial warehouse building, constructed in 2007. Rentable building area is 17,874 square feet, including 5,874 square feet at a second floor or mezzanine level. The land parcel contains 1.62 acres. Based on the building footprint area of 12,000 square feet, the site coverage ratio is 17.01%.

The property assessment of \$3,600,000, which includes an adjustment for 0.70 acre of "Extra Land", represents a unit rate of \$201 per square foot of rentable building area.

**Issues:**

The Complainant raised the following matters in section 4 of the complaint form: *Assessment amount (No. 3 on form)* and *Assessment class (No. 4 on form)*.

The Complainant also raised the following specific issues in section 5 of the Complaint form:

- The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Regulation 220/2004
- The use, quality and physical condition attributed by the municipality to the subject property is incorrect, inequitable and does not satisfy the requirement of Section 289 (2) of the Municipal Government Act
- The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts
- The information requested from the municipality pursuant to Section 299 or 300 of the Municipal Government Act was not provided
- Due to the characteristics and physical condition of the subject property, the income approach utilizing typical market rents, vacancy, management, nonrecoverables, & cap rates would yield a more reliable estimation of market value for assessment purposes
- The indicated value returned by the income approach described is \$130.71 psf
- The assessment regression model method used is incorrect and does not accurately reflect the market value for assessment purposes of the subject property

- The valuation method used for the subject property is fundamentally flawed in both derivation and application
- The value attributed to the land is not reflective of market value for assessment purposes
- The aggregate assessment per square foot applied is inequitable with the assessments of other similar and competing properties and should be \$130
- The assessment does not reflect the parking commitments required on this site and its commitment to adjacent sites
- The aggregate assessment per square foot applied to the subject property does not reflect market value for assessment purposes when using the direct sales comparison approach

At this hearing, the Complainant stated that the issues were "The subject property is inequitably assessed compared to similar and competing properties. The assessment does not consider the restriction on title that would allow for subdivision or further build out of the site."

**Complainant's Requested Value:**

\$2,410,000 (\$135 per square foot of rentable building area)

**Board's Decision in Respect of the Issues:**

The Complainant presented evidence to the CARB regarding registrations on the title to the subject property. Among these was a Caveat regarding a Parking Agreement between the owner of this lot (Lot 3) and a nearby lot (Lot 1).

The July 1, 2007 agreement was pursuant to a use that was to be made of the building on Lot 1 and the conditions of approval of The City of Calgary development permit DP2007-0355. The building on Lot 1 was leased to Northland Gold's Gym Corp. for a substantial health and fitness club. That use required more parking than was available on Lot 1. The development permit was approved "*on the condition that the Lot 1 owner enters into a formal agreement to address a parking shortfall identified by the City of Calgary upon its review of the application.*"

Lot 1 and Lot 3, along with Lot 2 (and perhaps other lots) in the same subdivision were all owned by one owner – Shepard Development Corporation ("Shepard").

As owner of Lot 3, Shepard agreed to provide Lot 1 with "certain temporary" parking rights allowing Shepard as owner of Lot 1 to address the parking shortfall identified by the City.

A portion of the parking lot in front of the subject Lot 3 building was the subject of the agreement. On a plan attached to the agreement, 49 parking stalls along the 126 Avenue SE frontage of Lot 3 were designated as the Parking Area.

The agreement did not provide for any compensation to be paid to the Lot 3 owner by the Lot 1

owner for the use of the parking stalls.

There was no term specified for the agreement, however, there was a clause in the agreement that stated, in part, ". . . for so long as required by the Lot 1 Owner . . ."

Further, the agreement stated:

*"The Lot 1 Owner shall, at any time and at its sole discretion, have the right to re-locate the Parking Area (including a relocation to lands other than Lot 1), provided that any re-located Parking Area shall (a) provide equivalent parking space as the Parking Area, and (b) shall be in proximity to Lot 1 as may then required by the applicable land use bylaw.*

*If the Lot 1 owner permanently closes the premises carrying out the Permitted Use, or ceases to use Lot 1 for the Permitted Use, the rights granted pursuant to this agreement shall immediately terminate and the Parking Area shall revert to the Lot 3 Owner for its sole use."*

The Complainant argued that this Parking Agreement negatively impacted the subject Lot 3 property and reduced its market value accordingly.

Market value was not an issue in this complaint but the Complainant, through use of a set of Equity Comparables, demonstrated that the property should have been assessed differently.

The subject property has a site coverage ratio of 17.01%. The comparables set out by the Complainant suggested that 32% site coverage might be typical and the recalculated assessment was based on the subject property having this ratio.

Nine equity comparables were detailed in a chart. All of them contained multi-tenant buildings. One property was located in Foothills Industrial but the remainder were in East Shepard Industrial or Shepard Industrial. Building sizes varied from 19,647 to 58,173 square feet (the largest was a property with two buildings totalling 58,173 square feet in area). Years of construction varied from 1998 to 2007. Interior finish ratios were from 18% to 80% and site coverage ratios were from 30% to 41%. Assessments ranged from \$121 to \$137 per square foot of rentable building floor area, indicating a median of \$131 and a mean average of \$130. Three of the comparables had 32% site coverage ratios and based on those comparables, the Complainant selected \$135 per square foot as being applicable to the subject.

The subject's area of 17,874 square feet, times the \$135 per square foot rate, indicated a value of \$2,412,990 which was truncated to the requested assessment of \$2,410,000.

In the opinion of the Complainant, the subject property had a lower than typical site coverage ratio but there is an encumbrance on the property that has a negative impact. This assessment calculation, based on assuming a more typical site coverage ratio of 32% took into account the impairment to the property of the parking agreement.

The Respondent explained that the assessment was based on the characteristics of the property with consideration given to the site coverage ratio. Assessments are based on a typical site coverage ratio of 30% and any property with a ratio lower than 30% is adjusted upwards to reflect "Extra Land." That adjustment is done within the multiple regression assessment model so the amount of the adjustment is not provided. By the assessment calculations, 0.70 of an acre is classified as Extra Land in this property.

Two equity comparable tables were provided by the Respondent. The first table contained the equity comparables put forward by the Complainant. Highlighted cells in the table showed where there were characteristics that made each comparable inferior to the subject on a comparison basis. For all of the nine comparables, the site coverage, year of construction and rentable area cells were highlighted, except for one where the year of construction was 2007, the same as for the subject building. In the interior finish column, six of the nine cells were highlighted. The purpose of this table was to show how almost all of the Complainant's comparables were significantly different than the subject and, after adjusting, would indicate a higher assessment for the subject than was being requested.

The second table contained data on six properties that the Respondent argued were more similar to the subject. These properties were located in various southeast Calgary industrial parks. Building sizes varied from 11,050 to 24,000 square feet. Interior finish ratios were from 18% to 51% and site coverage ratios were from 11% to 24%. Years of construction were from 1972 to 2007. All of the properties were single tenant properties. Assessments ranged from \$174 to \$206 per square foot of building rentable area. The Respondent stated that all of these properties would have had adjustments made in the preparation of their assessments because of the lower than typical site coverage ratios and that was the reason for their selection as comparables. Details of the adjustments were not provided.

With respect to the impact of the parking agreement on the subject property, the respondent stated that he was not sure how it should be handled and would defer to the decision of the CARB.

### **Findings**

In view of the above considerations, the CARB finds as follows with respect to the issue:

The CARB cannot accept that the subject property is impaired to the extent that its market value is negatively impacted. The issue in this complaint was equity in assessments between similar properties, however, the basis of assessment is market value and implications of value cannot be totally ignored.

At the time of making the assessment, both the subject Lot 3 and the nearby Lot 1 were under the same ownership. The owner is the developer of the area in which the properties are located. If there were different owners of Lots 1 and 3, the CARB is of the opinion that the parking agreement would never have been put in place without compensation to the owner of Lot 3. While the Complainant testified that the tenant in the Lot 1 building did not pay additional compensation for the parking on the subject property, there was no evidence to confirm that statement.

Technically, there was an encumbrance on the subject property as at the condition date of December 31, 2009. The terms of the agreement, however, indicate that it could be terminated at any time:

There is no term set for the agreement – just a starting date;

The City of Calgary development permit approval does not state that the parking shortfall for Lot 1 must be satisfied by the provision of parking on Lot 3;

The agreement itself states that the parking rights are “temporary”;

The agreement states that, at any time and at its sole discretion, the Lot 1 owner can re-locate the parking area.

All of these indicate that if Lot 3 was to be sold, the parking agreement could be removed so as not to negatively impact on the sale price of the property.

In conclusion, the CARB finds that there is insufficient evidence before it to warrant an assessment reduction on the basis of equity. The method by which the Complainant made the equity comparison is unorthodox and it has not convinced the Board that the assessment should be reduced by that amount.

**Board's Decision:**

The 2010 assessment is confirmed at \$3,600,000.

DATED AT THE CITY OF CALGARY THIS 23 DAY OF September 2010.

  
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W. Kipp  
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.*