

**CALGARY
COMPOSITE 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 Limited, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

L.R. Loven, PRESIDING OFFICER

D. Cochrane, MEMBER

E. Reuther, MEMBER

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

ROLL NUMBER: 068134501

LOCATION ADDRESS: 344 12 Avenue S.W.

HEARING NUMBER: 59905

ASSESSMENT: 2,030,000

This complaint was heard on the 29th day of September, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- B. Ryan, representing Altus Group Limited, on behalf of Enjay Holdings Alberta Ltd.
c/o Tonko Development Corp.

Appeared on behalf of the Respondent:

- D. McCord, representing the City of Calgary

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

Both the Respondent and the Complainant confirmed to the Board that they had no procedural or jurisdictional matters to be raised.

This matter was originally scheduled to heard on October 5th, 2010, and was brought forward at the request of the Complainant and the Respondent.

Property Description:

The subject property consists of a 7,685 square foot commercial office building known as Lacey Court, constructed in 1956, located in the Beltline Community, on a 10,500 square foot site with 79 parking stalls. The assessment is \$2,030,000.

Issues:

1. The assessed value does not reflect the market value;
2. The assessed value is not equitable; and
3. The 2009 assessed value does not reflect the highest and best use;

Complainant's Requested Value: \$1,180,000

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

Issue 1: Market Value

The Complainant firstly submitted a chart of Beltline income approach parameters, showing an average rent rate of \$18 per square foot, vacancy at 5.75% and non-recoverable expenses at 2%.

Secondly, the Complainant submitted a Municipal Government Board Notice of Decision, dated June 11, 2010 confirming a 2009 decision for the subject property, of the Calgary Assessment Review Board at \$1,590,000, and noted a 11.57% exemption or \$184,093.

Thirdly, the Complainant provided a chart containing 26 leases giving averages of July 15, 2009 lease start date, area of 2,756 square feet, \$16.45 per square foot rent rate, and 5 year term; and medians of July 16, 2009, area of 1,970 square feet, and 5 years respectively with a coefficient of dispersion of 0.12 and a weighted average of \$15.70 per square foot.

Fourthly, the Complainant provided a chart a Beltline 2009 office rental rate analysis showing a downward trend line.

The Complainant submitted a suggestion of Value using the Income Approach, revised in the hearing and summarized below.

Component	Area (sf)	Rent/Rate	Income	Value
Office	6,885	\$ 15.00	\$ 103,275	
Office - Below	800	\$ 8.00	\$ 6,400	
Subtotal	7,685		\$ 109,675	
Parking			\$ -	
TOTAL			\$ 109,675	
Vacancy (-)	0	8.5%	\$ 9,322	
OC (VS Short				
Fall)(-)		\$ 12.00	\$ 7,839	
Non Recoverable (-)		2%	\$ 2,007	
NOI			\$ 90,507	
Cap Rate		7.5%		\$1,206,758
Exemption(-)				\$119,346
Assessment				\$1,080,000

Based on its consideration of the foregoing evidence and argument, the Board finds the appropriateness of the Income Approach in this case was supported by previous decisions, and that these decisions were, in part, based on the then current DC zoning of the subject property that restricted its ability to be developed.

Issue 2: Equity

The Complainant provided five equity comparables showing a median and average office rate for Class C buildings of \$15.00 per square foot and median and average assessment of \$180 and \$178 per square foot respectively. All assessed using the Income Approach parameters of 8.5% vacancy, \$12.00 per square foot operating costs, a 2% non-recoverable rate and a 7.5% capitalization rate.

The Complainant referred to Municipal Government Board Notice of Decision No DL 025/10 regarding 21 properties located in the Beltline, that the assessment be based on a 7% capitalization rate.

The Respondent provided a copy of the Master Rent Roll for the subject property showing base rents of \$23.00 per square foot, expected rents of \$12.55 and \$15.00 per square foot, and 1823 occupied by Dr. John Lacey International Ltd. ("DJLI") at \$0.00 per square foot, and a fax cover page noting the 720 square feet of the DJLIL premises is sub-leased to the Royal Thai Consulate.

The Respondent provided a table containing 101 BL3 properties, showing 63 properties assessed using the Sales Approach, the remainder using the Income Approach. The assessed rate per square foot of the properties assessed using the Sales Approach ranged from \$161 to \$324.

Based on its consideration of the argument and evidence provided, the Board finds that subject property may not have been inequitably assessed using the Sales Approach and a land value of \$215 per square foot.

Issue 3. Highest and Best Use.

The Complainant submitted that the potential to develop the subject property is restricted by its 10,500 square foot parcel size and neighbouring office towers located to either side; and moreover, in today's market, he does not consider re-development to be probable or economically feasible.

The Complainant provided further argument referencing firstly, ARB 0419/2007-P regarding the subject property, zoned DC #72Z84 at the time, that highest and best use was restricted by the intensity achievable on the subject property; secondly, ARB 0621/2008-P, also regarding the subject property, that the assessment does not reflect the highest and best use, and the appropriateness of the Income Approach; and thirdly, a Municipal Government Board (MGB) Notice of Decision, dated March 6, 2009, noting the withdrawal of the appeal regarding the decision for the subject property by the Calgary Assessment Review Board, ARB 0621/2008-P.

The Respondent provided *Part 11 – Division 5; City Centre Mixed Use District (CC-X)* by-laws and submitted that the current CC-X land use designation of the subject property in effect for the current assessment year, allows a floor area ratio of 5 with additional provisions up to 8 or 12 for mixed use developments, or a building area from 52,500 to 126,000 square feet, compared to the current development of 6,965 square feet. The Respondent stated that a potential floor plate of 10,130 is comparable to B and C class buildings in the downtown core.

Based on the evidence and argument submitted, the Board finds that the change in the land use from DC #72Z84 to CC-X removes potential development restrictions cited by the Complainant, and therefore any basis for agreement with the two prior decisions referenced by the Complainant

Summary:

The only issues argued by the Complainant were the market value based on the Income Approach, equity and highest and best use.

The valuation method applied in this instance was the Direct Sales Approach. The use of this approach to value is contextually allowed in the legislation. The Complainant argued that the Income Approach is more appropriate. However this argument relied on restrictions in the potential to develop the property. Previous decisions accepting the use of the Income Approach were made when the zoning of the property was of a Direct Control (DC) type.

Since those decisions, the Board finds the change zoning of the subject property to CC-X, has effectively removed the restrictions of the previous DC zoning and increased the development potential to that of other similarly zoned properties.

The Board further finds that the zoning change, by reducing the development restrictions, also removed the basis on which the Income Approach and highest and best use arguments relied; that

is, if the property could not be further developed because of the development restrictions of the DC zoning, then the Income Approach and highest and best use arguments held validity.

The Board further finds that the small size of the subject property and its location in between two high rise developments, and its lack of potential to be assembled as part of a larger development has little or no weight.

Board's Decision:

For the reasons set forth above, the assessment of the subject property is hereby confirmed as follows: \$2,030,000.

DATED AT THE CITY OF CALGARY THIS 1 DAY OF NOVEMBER 2010.



L.R. LOVEN

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.*