

**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:

B. Horrocks, PRESIDING OFFICER

J. Massey, 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:	415015908
LOCATION ADDRESS:	430 COUNTRY HILLS BV NE
HEARING NUMBER:	59071
ASSESSMENT:	\$4,250,000

This complaint was heard on the 6th day of October, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2

Appeared on behalf of the Complainant:

- Mr. A. Izard (Altus Group Ltd.)
- Mr. C. Fong (Altus Group Ltd.)

Appeared on behalf of the Respondent:

- Mr. M. Berzins
- Mr. P. Sembrat

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

The respondent advised that they were seeking an increase in the assessment to \$4,820,000 from the original assessment of \$4,250,000.

The complainant advised they would also be requesting an increase in their requested assessment from \$3,430,000 to \$3,520,000.

The merit hearing proceeded.

Property Description:

The subject property is a 2.60 acre parcel located in the Country Hills Village community in NE Calgary. The site contains a gas bar/convenience store combination and a stand alone car wash. In addition, a Minute Lube service centre was completed between July 31, 2009 and December 31, 2009. A Swiss Chalet restaurant is planned to complete the development of the parcel. The site is contiguous to the Country Hills Towne Centre with shared Access Rights of Way.

Issues:

The Assessment Review Board Complaint form identified 7 Grounds for Appeal. At the outset of the hearing, the complainant advised that there were 6 issues outstanding, namely:

(1) The subject property is assessed in contravention of Section 293 of the Municipal Government Act and Alberta regulation 220/2004.

(2) 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.

(3) The assessed value should be reduced to the lower of market value or equitable value based on numerous decisions of Canadian Courts.

(4) The non-recoverable allowance applied to the subject property should be increased to 5%.

(5) The Municipality has neither correctly, nor equitably, calculated and provided the correct allocation of space for this particular property as identified by the annual Rent Roll or its physical condition as a property as of December 31.

(6) The assessed capitalization rate is incorrect and should be increased to 8.5%.

Complainant's Requested Value: \$3,520,000.

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

The complainant submitted evidence package labelled C-1.

The complainant advised the assessment had been prepared on page 11 utilizing the cost approach to value, utilizing a Land Value of \$3,831,983 (\$33.87/ sq. ft.) and a Building Cost of \$418,874 as calculated utilizing the Marshall and Swift Estimator. The complainant argued that the subject is part of one contiguous shopping centre. Further, this shopping centre is also part of the larger Country/Coventry Hills Towne Power Centre which includes the Shell Gas Station, 200 meters from the subject, assessed using the income approach to value, opposed to the subject property which assessed at a materially higher value than the competing Shell Station.

The complainant, at page 38 and following, provided a number of previous decisions where the Municipal Government Board (MGB) and the Assessment Review Board (ARB) had reduced the initial assessments of gas bars (prepared utilizing the cost approach) after utilizing the income approach.

The complainant, at page 350 and following, provided a number of equity comparables for Gas Bars and argued that gas bar and car wash combinations have been assessed utilizing the income approach and an assessed market rent of \$105,000.

The complainant submitted "2010 Alternate Requested Shopping Centre Assessment Valuation" labelled C-2. The alternate valuation utilized a Net Market Rent of \$26.00/ sq. ft. for the Minute Lube, a Market Rent of \$125,000 for the Gas Bar, and all other parameters as utilized in evaluations for Power Centres, to arrive at a valuation conclusion of \$3,520,000.

The respondent submitted Assessment Brief labelled R-1.

The respondent, on page 17, provided the Assessment Summary for the subject, updated to include the Mister Lube, which had been prepared utilizing the cost approach to value. The Land Rate utilized in the calculations was 33.87/ sq. ft. The respondent noted that "on page 137 off the complainant's evidence you will find that Altus agrees with the subject land rate of \$33.87/sq.ft."

The respondent, at page 25 and following, provided the Alberta Assessors' Association Valuation Guide for Gas Stations. He noted on page 34, "In the case of gas station properties, the general lack of other types of reliable data result in the cost approach being the best means of measuring value." The respondent requested the assessment be confirmed at \$4,820,000.

The complainant provided Rebuttal Submission labelled C-3.

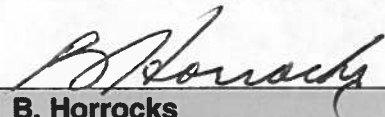
The complainant, on page 36 and following, provided a number of leasing examples of gas bars where the assessment had been prepared using the income approach. In addition, on page 60 and following, he provided a number of equity examples of gas bars where the assessment had been prepared utilizing the income approach.

The Board finds that utilizing the income approach, as proposed by the complainant on C-2, yields a property value of \$3,520,000. Further, utilizing the cost approach as proposed by the respondent on page 17 of R-1, yields a Land Value of \$3,831,983. It is clear, that in its current state of development, the income derived from the property is below the land value. As a result, the assessment should be reduced to the land value only.

Board's Decision:

The 2010 assessment is reduced to \$3,830,000.

DATED AT THE CITY OF CALGARY THIS 18 DAY OF October 2010.


B. Horrocks
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.*