

**CALGARY
COMPOSITE ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26, Section 460(4).

between:

Rickard Realty Advisors, COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***W. Garten, Presiding Officer
B. Jerchel, Board Member
A. Blake, Board Member***

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

ROLL NUMBER:	068031202
LOCATION ADDRESS:	320 4 Avenue S.W.
HEARING NUMBER:	57850
ASSESSMENT:	\$101,040,000

This complaint was heard on 12th day of July, 2010 at the office of the Assessment Review Board located at 3rd Floor Number, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 12. The hearing was adjourned to October 25, 2010 due to time constraints.

The complaint was re-convened on October 25, 2010 at the office of the Assessment Review Board located at 3rd Floor Number, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *S. Rickard and B. Dell - Representing Rickard Realty Advisors*
- *Dr. E Thompson – Witness for the Complainant*
- *Ross Meredith – Witness for the Complainant*

Appeared on behalf of the Respondent:

- *S. Cook. S. Trylinski and Jim 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. Complainant requested information from the Respondent on May 11, 2010 under Section 299 and 300 of the MGA however the City of Calgary did not comply with this request and the city apologize for not responding. The Complainant requested a Postponement on this basis.

The Board found that there was no evidence that the Complainant made a request to the Ministry by means of a Compliance Review under section 27.6 of MRAT. This provided an indication to the Board that the information was not critical and to a degree immaterial to the Complainant's position.

The Board decided to proceed with the hearing and any evidence that is brought forward by the Respondent pertaining to the requested information by the Complainant would be weighted accordingly in the final Board's decision as per Section 9 (4) MRAC.

2. The Complainant further requested a postponement as they were awaiting a decision by the MGB pertaining to a 2008/2009 board order based on similar issues with the hope that the 2008/2009 board order would expedite this appeal.

The Board found that the affect a 2008/2009 Board order is uncertain as the Board is now governed by the new MGA which came into effect starting in 2010. The Board found the neither party would be bound by this decision therefore there was no advantage or disadvantage to either party with proceeding with hearing the appeal.

The Board decided to proceed with the hearing on this basis.

3. The Complainant requested a postponement as there were certain parties/witnesses that were unavailable at the onset of this scheduled hearing.

Mr. Ludwig (legal counsel for the Complainant) was overseas.
Controller for the Westin Hotel was on holidays
Dr. E. Thompson (witness) had a Doctor's appointment

Firstly, the Board found that this pre-arranged hearing date was agree to by all parties (Complainant, Respondent and the Composite Assessment Review Board) and as such must comply with the MGA.

Secondly, the Board found that Mr. B. Dell (substitute legal counsel for the Complainant) was quite familiar with the files and was fully capable of assisting the Complainant with this current appeal.

Thirdly, the Board found that the Complainant could make alternate arrangements in lieu of the Accounting Controller (for the Westin) being on holidays.

Fourthly, the Board found that although Dr. E. Thompson may not be able to make it to the hearing, a commissioned report was available and the Board would weigh the evidence accordingly.

The Board decided to proceed with the hearing on this basis.

4. The Board further acknowledged that under Section 15(1) MRAC:

"Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing"

Property Description:

This Property known as the Westin Calgary is located at 320 4th Ave. S.W. Calgary AB in the downtown core of the City of Calgary. The Hotel consist 525 Rooms, Lounge, Restaurant, Banquet Facilities, Pool and Health Club. The Hotel type is considered a Full Service Hotel.

Issues:

The Complainant raised the matter that the income approach to value is incorrect and should be adjusted to reflected changes as per the following sub-issues:

1. The Complainant raised the matter that the stabilized income calculation for this property should include the first 6 months of 2009 which would better reflect the value of the Property as at July 1, 2009 (Valuation Date). This would bring more weight to the calculation during periods of Economic "Bust" or "Boom".
2. The Complainant raised the matter that the Management and Reserve percentage calculated by the City of Calgary is too low and should be changed to reflect a

3. The Complainant raised the matter that the FF&E (Furniture, Fixtures and Equipment) percentage calculated by the City of Calgary is too low and should be changed to reflect a percentage that is closer to actual cost.
4. The Complainant raised the matter that the Capitalization Rate of 10.5% used by the City of Calgary in calculating the 2010 assessment is too low and should be increased.

Complainant's Requested Value per Complaint Form: \$72,748,800

Revised at Hearing to \$78,000,000 per C-2 Worksheet

Complainant and Respondents Position:

The Complainant initially provided to the Board a copy of their submission C-1 and provided a demonstration Worksheet C-2 for all parties to utilize during the Complainants presentation. The Respondent had no objections to the utilization of this worksheet C-2.

The Complainant brought forward Dr. E. Thompson as a witness to explain his report which had been commissioned by the Calgary Hotel Association. The Complainant further brought forward Ross Meredith (General Manager of Westin Hotel) to explain the impact of the downturn. The details of this evidence became immaterial due to the outcome of the Board's decision.

The Complainant used the worksheet (C-2) to provide the Board a "scorecard" in order to keep track of the requested reductions in each category. It was requested that the Board increase the Management and Reserve from 8% to 11%, increase the Furniture, Fixtures and Equipment from 15% to 18%, reduce the assessment by equity comparison/room from \$192,460 to \$170,000 and increase the Capitalization rate from 10.5% to 11.0%.

Upon re-convening the hearing on October 25, 2010, the Complainant and Respondent both agreed to adjust this 2010 assessment based on a calculation derived from prior Board Decisions. The Board acknowledged prior decisions as ARB 1378/2010-P, ARB 1374/2010-P, ARB 1376/2010-P, ARB 1381/2010-P, ARB 1372/2010-P, ARB 1373/2010-P, ARB 1375/2010-P, ARB 1377/2010-P, ARB 1379/2010-P, ARB 1371/2010-P between the Altus Group and the City of Calgary. The applicable portion of these Decisions is as follows:

"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 Board has applied a weighting of 20% for the year ending June 30, 2007 Data, 30% to the year ending June 30, 2008 Data and 50% to the year ending June 30, 2009 Data.

As further agreed between the Complainant and the Respondent, the Complainant agreed to withdraw all other complaints pertaining to this 2010 Appeal.

The Board and the Respondent were provided (by the Complainant) a spreadsheet C-3 with a revised assessment calculated to June 30th 2009. This was calculation was consistent with previous Board decisions.

The Respondent agreed to the recalculated assessment (from C-3) in its entirety and the Complainant acknowledged that the numbers were based on the Respondent's calculation of the original 2010 assessment and matched the calculations in the Respondent's Submission (R-1) to the Board.

Legislation Specific to the decisions resulting from this hearing:

Section 299 MGA	Access to assessment record
Section 300 MGA	Access to summary of assessment
Section 27.6 MRAT	Compliance Review
Section 9 (4) MRAC	Failure to Disclose
Section 1591) MRAC	Postponement or adjournment of hearing
Section 1 (n)	Definition of "Market Value"
Section 289 (2) MGA	Assessments for property other than linear property
Section 3 MRAT	Valuation Date

Evidence Submitted

By the Complainant:

- C-1 Complainants Submission
- C-2 Complainants Worksheet
- C-3 Adjusted Property Assessment Calculation

By the Respondent:

- R-1 Respondents Submission

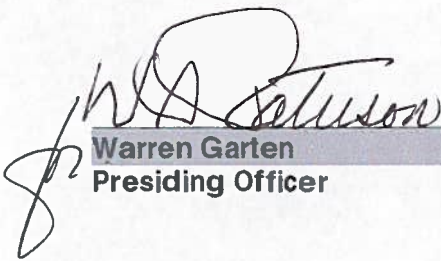
Board's Decision:

The Board found that the Complainant and Respondent both agreed to adjust the assessment based on a calculation derived from previous Board Decisions. The board acknowledged the previous decisions as ARB 55975/2010-P, ARB 57591/2010-P, ARB 57632/2010-P, ARB 59446/2010-P, ARB 59447/2010-P, ARB 59470/2010-P, ARB 57484/2010-P, ARB 59711/2010-P, ARB 59878/2010-P, ARB 59933/2010-P between the Altus Group (Complainant) and the City of Calgary (Respondent).

Upon review the Board found that the Complainant's supplied spreadsheet C-3 accurately reflected the calculations in the Respondents Submission as acknowledged by the Complainant.

It is the Board's decision that the assessment be reduced to \$96,570,000 as reflected in 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 25th DAY OF November 2010.



Warren Garten
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.*