

**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:

L. Lundgren, PRESIDING OFFICER

J. Rankin, MEMBER

S. Rourke, MEMBER

This is a complaint to the Calgary 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:	201181716
LOCATION ADDRESS:	10707 25 ST NE
HEARING NUMBER:	59271
ASSESSMENT:	\$31,830,000

This complaint was heard on the 8th day of Nov, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 4.

Appeared on behalf of the Complainant:

- *D. Chabot* *Agent, Altus Group Ltd*
- *A. Izard* *Agent, Altus Group Ltd*

Appeared on behalf of the Respondent:

- *K. Buckry* *Assessor, City of Calgary*

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

There were no procedural or jurisdictional matters.

Property Description:

The subject property is a 39.98 acre parcel improved with three industrial multi tenant warehouses of 121,934 square feet, 93,522 square feet and 90,462 square feet constructed in 2007, 2008 and 2009 respectively. The 39.98 acre parcel includes 16.1 acres of additional land.

In 1992 the Calgary Airport Authority (CAA) assumed responsibilities for the operation and expansion of the Calgary Airport (YYC) from the Federal Government. The CAA, by authority of a lease, allows tenants to operate on these lands. Leases are typically long term 25 to 40 years with some recent ones up to 55 years.

All of the airport land properties, including the subject, are assessed on the income approach to value using a vacancy rate of 5.25%. This complaint is filed, in part, on the basis that the vacancy rate should be increased to 14%.

Issues:

1. What is the correct vacancy rate to value the subject property for assessment purposes?
2. Should the additional land be reclassified as farmland?
3. Should the property assessment be increased to \$36,710,000 as requested by the Respondent?

The only issues that the Complainant brought forward in the hearing before the Composite Assessment Review Board (CARB) are those referred to above, therefore the CARB has not addressed any of the other issues initially raised by the Complainant on the complaint form.

Complainant's Requested Value: \$ 22,710,000

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

1. What is the correct vacancy rate to value the subject property for assessment purposes?

The Complainant argued that the industrial properties located on the Calgary Airport Authority (CAA) land are different than the industrial properties located in the balance of the industrial areas of the city. All of the CAA land is leased to tenants and the tenant improvements are vested to the CAA on the termination of the lease, whereas, in the other industrial areas the property owner owns both the land and improvements. Airport properties are seldom sold and if a sale does occur, it is for the improvements only, therefore, the primary method of valuation for airport properties is the income approach. Historically, the airport properties were assessed using a higher capitalization rate than other industrial area properties. The higher capitalization was applied in recognition of the increased business risk to the land tenants on airport leased land. This year, the Respondent valued the airport properties on the income approach while valuing the other industrial properties on the direct sales approach. For these reasons, the Complainant asserts that the airport properties are different than properties located in the other industrial areas of the city.

The Complainant argued that the 5.25% vacancy rate used by the Respondent to prepare the subject assessment does not reflect the high vacancy rates of the industrial properties on airport land. The Complainant submitted that the airport lands have experienced high vacancy rates as opposed to the other industrial areas, and the average vacancy rates for industrial properties in the northeast, central, and southeast areas of the city should not be used to value the subject property. The Complainant demonstrated the difference in vacancy rates by providing third party reports for vacancy rates in industrial areas. The industrial market vacancy rates reported by CB Richard Ellis (CBRE) for the second quarter of 2009 are: northeast 4.1%, central 1.2%, southeast 5.6%, and the Airport district 12.4%. For the third quarter of 2009 CBRE reports: northeast 4.3%, central 2.5%, southeast 5.0% and the Airport district 11.3%. The Complainant also provided the Avison Young industrial market report for year end 2009/2010 which reported the northeast vacancy rate at 1.7%. None of the vacancy rates for industrial areas reported by third parties approach the actual vacancy experienced by the airport land tenants. Of note, are the higher vacancy rates of 12.4% and 11.3% for the Airport district.

The Complainant argued that the average vacancy rate for the airport properties should be used to value the subject property. In support of this argument, the Complainant presented an Airport Vacancy study using nineteen airport properties with a total area of 2,347,071 square feet having an average vacancy rate of 14.34% as of July 1, 2009. Based on this evidence, the Complainant requested a vacancy rate of 14% be applied to the subject property.

The Respondent confirmed that a vacancy rate of 5.25% was used to calculate the assessment, and that it was drawn from all of the industrial areas in the city. The Respondent explained that the average vacancy rate of airport properties was not used to assess the airport properties because the airport forms a small part of the northeast industrial area and is too small to develop a typical vacancy rate. Although it was not used in the preparation of the assessment, the Respondent provided the 2010 Airport Vacancy Chart based on all of the land leased by the CAA. The chart shows a total space of 4,344,269 square feet with a vacancy rate of 13%. The Respondent was critical of the Complainant's Airport Vacancy study because it considered only 2,347,071 square feet of the airport space which sample is too small to be reliable.

Rather than relying on its own vacancy rate study, the Respondent relied on a third party report

published by Colliers International. The 5.25% vacancy rate used to prepare the assessment was based on the Colliers International second quarter 2009 report which stated the city wide industrial vacancy rate as 5.21%. The Respondent requested the Board to confirm the use of the 5.25% vacancy rate.

The Board accepts the Complainant's argument that the industrial properties located on CAA land are not similar to industrial properties located elsewhere in the city, and that the vacancy rates from other industrial areas should not be used to assess the properties located on the CAA land. The Board considered the vacancy studies performed by each of the parties and finds the Respondent's 2010 AIRPORT VACANCY study to be the most accurate because it includes all of the vacant space on the airport land. The Complainant's sample of 2,347,071 square feet represents approximately 54% of the total space of 4,344,269. The Board observes that the results of the two vacancy studies are almost identical, with the Respondent's average vacancy rate of 13% and the Complainant's average vacancy rate of 14.34%. The Board also considered the CBRE reports for the Airport district and finds that the vacancy rates support the results of the vacancy rate studies performed by the two parties. CBRE reported a vacancy rate of 12.4% in the second quarter of 2009, and a vacancy rate of 11.3% in the third quarter of 2009. The Board is placing the most weight on the Respondent's 2010 AIRPORT VACANCY study and will apply a vacancy rate of 13% in the valuation of the subject property for assessment purposes.

2. Should the additional land be classified as farmland?

The Complainant argued that the farming activity on the additional land is not recognized in the current assessment. The subject property assessment has 16.57 acres of additional land valued at \$480,000/acre, and the Complainant requested that the additional land be reclassified as farmland because it is used for a farming operation. The Complainant submitted a copy of the Assessment Request For Information – Farmland (ARFI) which shows that the land is leased for a term of five years starting June 24, 2009 with the type of farm operation stated as "Hay For Livestock Feed". The ARFI also states that "The parcel was disced and prepared for seeding. Hay was seeded but no hay will be harvested this year (2009). The hay will grow next year and be harvested." The Complainant clarified what happened on the additional land by stating that the farmer seeded the land in clover in 2009 but it did not germinate. In late July of 2010 the farmer seeded barley to the same areas previously seeded to clover, and by August 15th, 2010 the barley had germinated and was approximately three inches tall. Photographs of the barley crop were entered into evidence.

The Complainant presented three decisions in support of the request to reclassify the land as farmland. The first decision, *Calgary (City) v. Prestwick Development Corp.* 2001, upheld the decision of the Alberta Municipal Government Board MGB 002/01 which accepted that the parcel was used for farming operations because the grazing of horses constitutes the production of livestock. The second decision, DL 013/01, was reclassified as farmland on the basis of equity. The third decision, MGB 112/06, determined that the land which is being rested should be classified as farmland.

The Respondent argued that the additional land does not meet the criteria in *THE MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION (A.R.220/04) (MRAC) section 1(i) which defines farming operations as:*

Definitions

1 In this Regulation,

- (i) "farming operations" means the raising, production and sale of agricultural products and includes
 - (i) horticulture, aviculture, apiculture and aquaculture,
 - (ii) the production of horses, cattle, bison, sheep, swine, goats, fur-bearing animals raised in captivity, domestic cervids within the meaning of the *Livestock Industry Diversification Act*, and domestic camelids, and
 - (iii) the planting, growing and sale of sod;

The Respondent submitted that there was no raising, production and sale of agricultural products on the subject land in 2009 and the regulation requires all three components: *raising, production and sale*. Up until August of 2010, there was no agricultural crop and the 2010 crop is post facto.

The Respondent submitted photographs taken in 2007, 2008 and 2009 showing that the land was stripped and graded and ready for industrial development. The Respondent also presented a development plan showing the future development of three industrial buildings on the additional land.

The Respondent presented a decision, ARB 1273/2010-P, that denies the request to reclassify the land as farmland because it does not meet the requirements of the regulation. In this case there was a lease agreement with a farmer and evidence that the planted crop was mixed winter rye and grass, however, there was nothing in evidence which indicated the expectation or accomplishment of any production that would result in a sale.

The Respondent requested the Board to deny the request to reclassify the land as farmland.

The Board reviewed the definition of "*farming operations*" in *MRAC section 1(i)* and the Board finds that the use of the additional land does not qualify as a farming operation because there was no raising, production and sale of agricultural products related to this property. Accordingly, the market value of the additional land is confirmed.

3. Should the property assessment be increased to \$36,710,000 as requested by the Respondent?

The Respondent requested the Board to increase the subject property assessment based on an income approach using Altus' parameters of a 7.5% capitalization rate and a 5.0% vacancy rate. The Respondent is not acknowledging that these parameters are correct but chose to use them because Altus Group used them in a previous complaint. A Valuation Summary showing its intention to seek an increase in the assessment was included in the disclosure of its evidence in accordance with section 8(2)(b) of MATTERS RELATING TO ASSESSMENT COMPLAINTS REGULATION (MRAC).

The Complainant submitted that the parameters used by the Altus Group in a previous property complaint are not relevant because the properties are not similar. In particular, the capitalization rate requested in the previous complaint was for an industrial property located in an industrial area where the capitalization rates are lower. The subject property located on leased land should have a higher capitalization rate than a property located in an industrial area as argued earlier on the vacancy rate issue.

The Complainant raised an objection to the Respondent's request to increase the assessment on the basis that this is a new issue and section 9(1) of *MRAC* states that a composite assessment review board must not hear any complaint in support of an issue that is not identified on the complaint form.

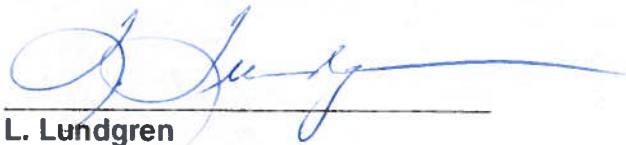
The Board finds that the Respondent's request to increase the assessment is not a new issue and the intention to seek an increase in the assessment was properly disclosed. The Assessment Review Board Complaint form identifies the assessed value as one of the issues and the Respondent's evidence addresses, among other things, the request to increase the assessment.

With respect to the Respondent's request to increase the assessment to \$36,710,000, the Respondent failed to produce any evidence to show that a capitalization rate of 7.5% and a vacancy rate of 5.0% would result in a correct estimate of market value. To the contrary, the Respondent stated that it is not acknowledging that the parameters used are correct. Based on the lack of evidence, the Board denied the request.

Board' Decision:

The complaint is allowed in part and the property assessment is reduced to \$29,130,000.

DATED AT THE CITY OF CALGARY THIS 8 DAY OF December 2010.



L. Lundgren
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.*