

**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:

F. Wesseling, PRESIDING OFFICER

I. Zacharopoulos, MEMBER

A. Wong, MEMBER

These are complaints to the Calgary Assessment Review Board in respect of Property assessments prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

| LOCATION ADDRESS | HEARING | ROLL NUMBER | AREA (square feet = sf) | ASSESSMENT |
|-------------------------|----------------|--------------------|--------------------------------|-------------------|
| 2455 96 AV SE | 58989 | 200945871 | 261,572 | \$ 3,490,000 |
| 2487 91 AV SE | 58989 | 200945889 | 42,734 | \$ 987,000 |
| 9358 23 ST SE | 58989 | 200945897 | 86,975 | \$ 1,420,000 |
| 9372 23 ST SE | 58989 | 200945905 | 86,975 | \$ 1,420,000 |
| 9468 23 ST SE | 58989 | 200945913 | 86,975 | \$ 1,420,000 |
| 2456 96 AV SE | 58989 | 200945921 | 43,488 | \$ 994,500 |
| 9223 23 ST SE | 58989 | 200945947 | 174,381 | \$ 2,300,000 |
| 9355 23 ST SE | 58989 | 200945954 | 174,381 | \$ 2,300,000 |
| 9461 23 ST SE | 58989 | 200945962 | 174,381 | \$ 2,300,000 |
| 9577 23 ST SE | 58989 | 200945970 | 87,083 | \$ 1,430,000 |
| 2429 91 AV SE | 58989 | 200945988 | 42,734 | \$ 987,000 |
| 9580 23 ST SE | 58989 | 200945996 | 43,488 | \$ 994,500 |
| 2403 96 AV SE | 58989 | 200946002 | 357,374 | \$ 4,130,000 |
| 113 RIVER ROCK PL SE | 58989 | 200946010 | 44,887 | \$ 206,000 |
| 2488 91 AV SE | 58989 | 201436078 | 283,638 | \$ 6,790,000 |

The initial hearings were held on the 30th day of September, 2010 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta, 4th floor, Boardroom 10. Further hearings took place on November 9th, November 30th and the hearing was concluded on December 2nd, 2010 in Boardroom 3.

Appeared on behalf of the Complainant:

- D. Mewha, B. Brazzell (Nov 9) Agents, Altus Group Ltd.

Appeared on behalf of the Respondent:

- R. Farkas, D. Sembrant (Dec 2) Assessors, City of Calgary

Property Description:

The subject lands are located in the Riverbend area in SE Calgary and consist of 15 parcels. The subdivision has been registered and access roads to the parcels have been developed. The lands are intended for commercial/industrial uses and are currently vacant. A Direct Control land use designation (the designation) has been place for these lands since 1991/92 and envisions a hybrid of land uses. Land uses dealing with food preparation, serving and storage are prohibited due to a former and existing dry landfill operation in close proximity. Primary access to these parcels is via 24th Street SE which has been partially completed.

The basis for the current assessments (except for the River Rock PI parcel which is uniquely valued as a "Special Purpose – Future Urban Development" site due to lack of access) is "Commercial – Neighbourhood District". The land rate structure utilized in assessing each of the remaining 14 parcels is \$76.00/sf for the first 20,000sf and \$20.00/sf for the remaining area, with negative influences of 25% for servicing and 25% for access (as per R1, page 62).

Regarding Brevity:

In the interests of brevity the Board will restrict its comments to those items found relevant to the matters at hand.

Preliminary or Jurisdictional Matters:

The Respondent informed the Board that the Assessor was proposing new assessments (verbalized at the opening of the hearing) for a number of the properties before us. The Complainant objected to a consideration by the Board of these new valuations, claiming they were not disclosed in accordance with *Alberta Regulation 310/2009* (MRAC), *Sec 8*. The Respondent took the position that the Board was empowered by the *Municipal Government Act* (MGA) to increase assessments and that the evidence would speak to that matter.

Board's Findings and Decision in Respect of Preliminary or Jurisdictional Matters:

The disclosure before the Board is clarified below. Through questions it was determined that the new assessments being proposed by the Assessor were not within the Respondent's evidentiary

disclosure. Through testimony the Respondent claimed the new assessments were a result of the Complainant's rebuttal evidence (C-2) and were the Assessor's response to it as per *MRAC, Sec (8)(2)(c)*. The issue of servicing was specifically addressed by the Respondent; noting the current assessment includes a negative adjustment of 25% for lack of servicing while the Complainant's rebuttal states the subject properties are in fact serviced.

The Complainant claimed a review of the disclosures by both parties would clarify what in fact has been disclosed and restated that the proposed assessment increases were not disclosed prior to the September 30th hearing. Furthermore, the Complainant took the position that the information within its disclosure and any considerations leading to the assessment are not exclusive to its rebuttal so the Respondent's reliance on *MRAC Sec (8)(2)(c)* is inappropriate.

The Board was primarily concerned with the Complainant's opportunity to sufficiently consider the City's request. In the interest of fairness, the Board adjourned the hearings of September 30th in order to give the Complainant time to consider the possibility – introduced by the Respondent – that the assessments may be increased. The evidentiary disclosure timelines – as confirmed by the Board at the hearing of November 9th – were not revised and the merit hearings were held on November 30th and December 2nd in keeping with the evidentiary disclosure completed in accordance with the September 30th hearing date.

Upon review of *Sections 4, 8, 9 of MRAC* and *Section 305* of the MGA, the Board finds the Respondent's requested new assessments were not properly disclosed and will therefore give that verbal submission no weight.

MRAC, Sec 8 sets out the timelines for the disclosure process. While there is no timeline regarding rebuttal evidence from the Respondent, it is the Board's interpretation that all evidence should be consistent and transparent with the party's initial position. The Complainant's evidence is clearly directed at a request for an assessment reduction. In response the Respondent claims the inclusion of a chart entitled "Commercial Corridor land sales" (R1, page 61) and the associated "Commercial Land Rate and Influence Tables" (R1, page 62) adequately supports the requested increase in assessment.

The Board does not find this to be sufficient disclosure as envisioned by *MRAC*. The Board finds nothing within the Respondent's evidentiary disclosure that would allow the Complainant to conclude the Respondent's objective is an assessment increase. Lacking such evidence, the Board is not prepared to consider the new assessments verbally introduced by the Respondent at the time of the hearing of September 30th, 2010.

The Respondent also looks to the Board to conclude that the evidence before us suggests the current assessments are inadequate. The Board will address this within its findings on the merit portion of this decision.

Issues:

The Complainant raised the following matters in Section 4 of the Assessment Complaint form:

- Assessment amounts and Assessment class.

There was no argument made regarding assessment class; the only matter addressed was the assessment amounts. A large number of issues were outlined in Section 5 of the complaint forms. Presentations of the Complainant and Respondent were limited to:

- The assessments are overstated in relation to comparable properties.
- The sales and equity comparables indicate the assessments are overstated.
- There are land use and access limitations affecting the subject properties.

The parties' positions:

Complainant's position: General background was provided on the subject properties with regard to location, access, current state of development and future intended use of the property. In addition, the Complainant provided information and background on the assessment appeal dealing with the same properties by the Municipal Government Board in 2009. There have been no substantive changes to the properties since that time. It is the intent of the owners to develop this business park with similar land uses as the Quarry Park lands to the south. The subject lands, while proposed through the designation for a hybrid of commercial/industrial uses, are restricted in terms of some land uses. Access to the subject properties at the time of assessment was circuitous and access to major arterials such as Glenmore and Deerfoot Trails was indirect.

Sales and equity comparables were provided and reviewed for the Board's consideration. Sale documentation for the subject properties was reviewed. The sale took place in September of 2006 and after adjusting for time and servicing the Complainant advanced a total value for the subject properties of \$18,291,600. As for equity comparables, Quarry Park was highlighted and it was noted that the major inequity between the two areas is the restriction on land uses associated with food storage, preparation and service for the subject properties.

The designation in place for the subject properties dates back to 1992/93 and mandates a hybrid of commercial/industrial uses with the above noted restrictions. Land use restrictions and designations on similar properties were reviewed. The Complainant contends the Respondent's reliance on zoning designations in determining the assessment is not appropriate and points to the Quarry Park development as an indicator of land uses likely to be undertaken within the subject properties.

Further to its market analysis relying on equity comparables and the sale of the subject properties in 2006, the complainant requested assessment revisions based on a value of \$ 400,000.00 per acre with no adjustments for influences. The requested revisions are as follows:

| LOCATION ADDRESS | ROLL NUMBER | ASSESSMENT |
|----------------------|-------------|--------------|
| 2455 96 AV SE | 200945871 | \$ 2,402,000 |
| 2487 91 AV SE | 200945889 | \$ 392,400 |
| 9358 23 ST SE | 200945897 | \$ 798,800 |
| 9372 23 ST SE | 200945905 | \$ 798,800 |
| 9468 23 ST SE | 200945913 | \$ 798,800 |
| 2456 96 AV SE | 200945921 | \$ 399,200 |
| 9223 23 ST SE | 200945947 | \$ 1,601,200 |
| 9355 23 ST SE | 200945954 | \$ 1,601,200 |
| 9461 23 ST SE | 200945962 | \$ 1,601,200 |
| 9577 23 ST SE | 200945970 | \$ 799,600 |
| 2429 91 AV SE | 200945988 | \$ 392,400 |
| 9580 23 ST SE | 200945996 | \$ 399,200 |
| 2403 96 AV SE | 200946002 | \$ 3,281,600 |
| 113 RIVER ROCK PL SE | 200946010 | \$ 206,000 |

| | | |
|---------------|-----------|--------------|
| 2488 91 AV SE | 201436078 | \$ 2,604,000 |
|---------------|-----------|--------------|

Respondent's position: The Respondent did not defend the current assessments before us but in fact verbally attempted to convince the Board to revise all of the assessments except for Roll Number 200946010. The proposed changes were not substantiated through written evidence.

The Respondent argued that upon review of the evidence before us the Board should conclude the assessments under complaint are in fact inadequate and should be increased. It is the Respondent's conclusion upon review of the designation that commercial uses play a more dominant role in the future development of the referenced parcels and as such the assessments should reflect commercial use.

The Respondent provided sale comparables for both large and small parcels for commercial neighbourhood and commercial corridor properties. The current referenced assessments are based on Commercial Neighbourhood District (C-N) sales as per R1, page 60. The Respondent concluded these assessments should be based on Commercial Corridor District (C-COR) sales as per R1, page 61. The impact of the assessment land rate variances is shown under the chart "Commercial Land Rate and Influence Tables as shown under R1, page 62. The Respondent referenced area limitations established by Land Use Bylaw 1P2007 for C-N2 parcels as a critical consideration.

The Respondent proposed that both negative influence factors (access and servicing) are in fact incorrectly applied to the referenced assessments. It is claimed that access is not problematic and that the influence factor (-25%) was provided due to the lack of completion of the local roads at the time of assessment. Furthermore, it is noted that while the referenced assessment also include a negative adjustment of 25% for lack of servicing, the Complainant's rebuttal states the subject properties are in fact serviced.

Complainant's Rebuttal: The Complainant provided information as to how the properties may be developed. In addition, an Appraisal report was provided dated December 2009. This report indicated the properties were serviced and was the basis for the Respondent's request for an increase in assessment. The appraisal was prepared for financial purposes. An analysis of sales comparables advanced by the Respondent was provided and concludes that potential market influences (e.g. location, size, development horizon, adjoining uses, etc) are substantially different from those affecting the subject properties.

Board's Findings:

While the Board will not consider the requested new assessments offered by the Respondent (see jurisdictional matter above) the request to increase the assessments as per the evidentiary disclosures is still before us. While *Section 467* of the MGA allows the Composite Assessment Review Board to change the assessment, it must be based on sound evidence. The Board must be swayed that a revision is prudent.

As part of a preliminary discussion the Respondent had provided the Board verbally with an indication that the assessments for the subject properties are wrong, largely based on the land use and development guidelines within the designation. The Board does not agree with the Respondent's dependence on the designation (now more than 25 years old) as the prime determinant of value, especially in that the Respondent was unable to comment on the relationship

between designation, development and the market conditions that may affect that process. The Board found the Complainant's references to the neighbouring Quarry Park to be reasonable and effective.

Furthermore, the Respondent's market evidence was very scant and found by the Board to be unconvincing. The Respondent has provided no property details to support its market analysis and has no response to the Complainant's evidence illustrating dissimilarities between the subject lands and the Respondent's market references.

The Board is therefore not swayed to increase the assessments.

Instead, the Board finds the Complainant's analysis and adjustments of the sale of the subject properties dated August, 2006 is not effectively refuted by the Respondent. Again, the Complainant's equity reference to Quarry Park seems reasonable to the Board in light of proximity, likely land use, location, influences, etc. Lastly, the 2009 Municipal Government Board decision supports the Complainant's position and is in line with the market and equity references noted above.

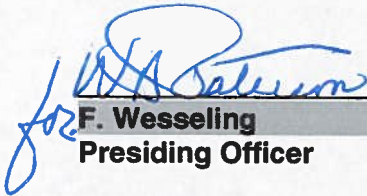
In light of this, the Board finds no support for the current assessments (except for the River Rock PI property, which the Complainant has accepted).

Board's Decisions:

The Board finds the assessments of the subject properties is best represented by the Complainant's analysis and amends the assessments as per the Complainant's requests rounded as follows:

| LOCATION ADDRESS | ROLL NUMBER | ASSESSMENT |
|-------------------------|--------------------|-------------------|
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| 9580 23 ST SE | 200945996 | \$ 399,000 |
| 2403 96 AV SE | 200946002 | \$ 3,281,000 |
| 113 RIVER ROCK PL SE | 200946010 | \$ 206,000 |
| 2488 91 AV SE | 201436078 | \$ 2,604,000 |

DATED AT THE CITY OF CALGARY THIS 20 DAY OF December 2010.


F. Wesseling
Presiding Officer

The Board was presented with the following disclosure submissions:

Complainant:

- C1 - Evidence Submission of the Complainant to the Assessment Review Board prepared by Altus Group Limited.
- C2 - Rebuttal Evidence prepared by Altus Group Ltd.
- C3 - Court of Queen's Bench of Alberta. Ag Pro Grain Management Services Ltd v. Lacombe (County of), 2006 ABQB
- C4 - Partial copy of Audio Transcription

Respondent:

- R1 - Assessment Brief prepared by City of Calgary Assessment Business Unit

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.*