

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property assessments as provided by the *Municipal Government Act*, Chapter M-26.1, Section 460(4).

between:

Altus Group Limited, COMPLAINANT

and

The City of Calgary, RESPONDENT

before:

H. Kim, PRESIDING OFFICER

R. Roy, MEMBER

A. Zindler, MEMBER

This is a complaint 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:

ROLL NUMBERS:	024015802	024015901	024016008
LOCATION ADDRESSES:	868 57 Ave NE	950 57 Ave NE	1020 57 Ave NE
HEARING NUMBERS:	59055	59058	59060
ASSESSMENTS:	\$2,690,000	\$2,820,000	\$2,970,000

This complaint was heard on the 10th of December, 2010 at the office of the Assessment Review Board located on the 4th Floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Property Description:

The subject properties are three vacant parcels in the Deerfoot Business Centre commercial zone in the Northeast quadrant, at the south boundary of the Deerfoot Mall. All three parcels are owned by Ivanhoe Cambridge I Inc. which also owns Deerfoot Mall. The parcels are zoned Commercial-Regional 3 (C-R3) and assessed at \$69/SF for the 30,000 SF and \$19/SF for the remainder, the rate applied to all C-R land (C-R1, 2 and 3). Parcel 1 is 62,751 SF with no adjustments which results in a land rate of \$43/SF. Parcel 2 is 62,740 SF on the west side of 9 St NE and receives a corner influence of +5% for a land rate of \$45/SF. Parcel 3 is 116,497 SF on the east side of 9 St NE. The east end of the lot tapers to a very sharp point where 57 Street NE offsets to the north. It receives a +5% corner influence and a -25% shape influence for a net adjustment of -20% resulting in a land rate of \$25.50/SF.

Issues:

The Complainant identified a number of issues on the Complaint form; however at the hearing the issues listed in the Complainant's disclosure were:

1. The influence adjustment factors applied in calculating the assessment are incorrect as it relates to corner influence and is inequitable compared to other properties.
2. Land-use restrictions and caveats on the subject properties support an additional allowance of -25%.

Complainant's Requested Values:

Roll Number	Address	Requested amount	Revised request at hearing
024015802	868 57 Ave NE	\$1,500,000	\$2,286,500
024015901	950 57 Ave NE	\$1,500,000	\$2,256,000
024016008	1020 57 Ave NE	\$1,000,000	\$2,376,000

Board's Decision in Respect of Each Matter or Issue:**Incorrect and inequitable adjustments applied****Complainant's position:**

The Complainant presented a copy of the subdivision plan indicating that 9th Street NE ends at the north boundary of the subject parcels. It is not a thoroughfare and therefore Parcels 2 and 3 are not in fact located on a corner. The 5% corner lot influence should not be applied.

Further, the corner lot influence is applied inequitably. Comparables for improved parcels in Sunridge, Deerfoot Business Centre and Coventry Hills were presented showing total assessment and rate per SF for land only. All of the comparables have the same C-R3 zoning as the subject parcels. The corner lot adjustments on these properties produce a land rate substantially lower than the subjects:

Address	2010 assessment	Property type	Site area (SF)	Asmt/SF of land	Influences (other than traffic)
3321 20 Av NE	1,390,000	Land & Impr	43,569	31.90	Corner lot
3575 20 Ave NE	22,330,000	Land & Impr	755,328	29.56	Corner lot
2665 32 St NE	10,680,000	Land & Impr	381,916	27.96	
901 64 Ave NE	82,070,000	Land & Impr	2,958,214	27.74	Corner lot
430 Country Hills Blvd NE	4,250,000	Land & Impr	113,132	37.57	Corner lot
950 57 Ave NE	2,820,000	Land Only	62,740	44.95	Corner lot
868 57 Ave NE	2,690,000	Land Only	62,751	42.87	
1020 57 Ave NE	2,970,000	Land Only	116,497	25.49	Corner lot, shape

Influences have been applied inequitably. Removing the corner lot influence and an additional - 15% allowance for limited access/uses would result in an assessment of \$20.40 to \$36.44/SF for the subject parcels, more equitable with the comparables than the current assessments.

Respondent's position:

The Respondent stated that the Complainant had not met onus and that no Respondent's submission would be entered. The Respondent stated that this was not being requested as a preliminary matter because of the unfavourable decision on the issue of onus in the previous hearing. The Respondent did agree to answer questions on the Complainant's evidence. In response to questions from the panel relating to the equity comparables, the Respondent stated that the property at 3321 20 Ave NE was assessed at \$31.90/SF of land because it had been assessed on the income approach and the resultant value was not compared to vacant land value. This was an error; however equity was not raised as an issue, only equity with respect to application of adjustments. The parcel at 430 Country Hills Blvd is approximately the same size as 1020 57 Ave NE but its assessment per SF is higher thus cannot be used to demonstrate inequity. The remaining equity comparables are substantially larger than the subjects and not at all comparable.

Decision and Reasons:

The survey plan indicates 9 St NE ends at the north boundary of the subject lots; however the road physically continues northward and is the south entrance into Deerfoot Mall. In the opinion of the Board, the corner influence is a measure of greater accessibility and better exposure, and the adjustment is correctly applied to reflect the advantages of location for the two parcels on the corner in comparison to the interior parcel.

With respect to the equity comparables, the Board agrees that the property on Country Hills Blvd NE does not demonstrate inequity, and notes that the land rates applied to C-R3 lands would result in a much lower value per SF for parcels substantially larger than 30,000 SF. The one parcel that demonstrated inequity was stated to be an error. In the absence of a greater number of comparables, the Board did not consider a single property some distance from the subjects to be sufficient justification for a reduction for equity. Further, the Complainant agreed that equity had not been raised as an issue, only equity with respect to application of adjustments, and the Assessment Summary Report indicates a Corner Lot influence was applied to that comparable. Therefore, the Board does not find that the comparables submitted demonstrate that the corner influence is inequitably applied.

Additional allowance for land use restrictions**Complainant's position:**

The Complainant presented copies of the Certificate of Title and registered documents for the subject parcels. There are two caveats on each of the titles, registered by the City of Calgary and Wal-Mart Canada Corp. that support this position. The City of Calgary caveat, registered in 1980 and assumed by the current property owner in 2002, relates to a development agreement ("Special Projects Agreement") required for the development of the Deerfoot Business Centre Phase 2 and 3. It specifies maximum development based on transportation restrictions and requires the developer to be responsible for the cost and construction of various roadway upgrades. The Wal-Mart Caveat re: Lease was registered in 2004 pursuant to agreements in their lease. It restricts development on the subject parcels, specifying maximum heights, permissible and prohibited uses and the requirement for approval from Wal-Mart prior to construction. This was compared to the provisions of C-R3 zoning in Land Use Bylaw 1P2007 to demonstrate that the caveat creates restrictions on development of the parcels which would reduce their market value. In addition to the caveats, Parcel 3 has influences for Corner Lot, Shape Factor and Transportation Utility Corridor. The Complainant stated that the survey plan shows a Utility Right of Way on Parcel 3 that would severely restrict its usable area.

The Complainant presented CARB 1199/2010-P issued September 24, 2010 which determined that restrictions on development supported a reduction in the assessment of a future shopping centre parcel in the southeast by the typical land use restriction adjustment of 25%.

In recognition of all of the above, the Complainant stated that a 15% negative adjustment should be applied to each of the lots to recognize loss in value due to limited access/uses.

Respondent's position:

The Respondent did not submit evidence, only argument with respect to the Complainant's submission. The caveats exist, however there was no evidence presented with respect to whether and how much they would affect market value. There was no market evidence presented to contest the land rates applied by the Respondent, and the reductions requested were from the table of influences extracted from previous Respondent submissions in 2009. The Respondent agreed that the allowances listed were the same as those in use for 2010 but disagreed with the applicability of either the LUR - Land Use Restriction [DC] or the ACC - Limited Access/Uses. LUR is applied when the zoning is Direct Control (DC) and limits the allowable uses on a parcel, and the Respondent noted that the parcel in CARB 1199/2010-P was zoned DC. ACC is applied when access to a parcel is restricted thereby limiting the uses. Neither of these conditions applies to the subject parcels and an adjustment is not supportable. The Respondent reiterated that the Complainant had not met onus and requested the assessments be confirmed.

Decision and Reasons:

The *Municipal Government Act* sets out the requirements for property assessment:

- 293(1)** In preparing an assessment, the assessor must, in a fair and equitable manner,
(a) apply the valuation and other standards set out in the regulations, ...

The valuation and other standards are set out in Alberta Regulation 220/2004 Matters Relating

to Assessment and Taxation Regulation (MRAT):

- 2 An assessment of property based on market value
 - (a) must be prepared using mass appraisal,
 - (b) must be an estimate of the value of the fee simple estate in the property, and
 - (c) must reflect typical market conditions for properties similar to that property.
- ...
- 4(1) The valuation standard for a parcel of land is
 - (a) market value, ...

The argument in the subject case was loss in value due to restrictions on development due to caveats registered on title, not due to zoning. The City of Calgary caveat was considered, however no evidence was provided to demonstrate that this type of development agreement was not typical of the conditions of approval of large regional shopping centres.

The subject parcels are within the "Future Development Area" in the Wal-Mart lease agreement, and as such are subject to fewer development restrictions than the balance of the lands, for example the maximum height is 28 feet as compared to 18 feet (p53, C4), and the plans are not required to be approved by Wal-Mart prior to construction (p54, C4). The list of permitted uses was extensive and in the opinion of the Board the list of prohibited uses did not unreasonably restrict the development of these parcels. There was no evidence to demonstrate that the restrictions were atypical of leases between an anchor tenant and a shopping centre landlord. Further, the Board does not consider restrictions based on a lease agreement to impact the value of the fee simple estate of a property. In the opinion of the Board such loss in value, if proven, would be analogous to the loss in value from a long term lease at lower-than-market rates. Such leases would likely impact the selling price but do not impact the value of the fee simple estate in a property for assessment purposes.

The Board considered the utility right of way on the survey plan of Parcel 3 which appeared to cover a significant portion of the parcel. However, it was not registered on the title and the Board could not determine what restrictions it imposed on development of the parcel.

Accordingly, the Board was presented with insufficient evidence to support a reduction based on limitations on use.

Board's Decision:

The complaint is denied and the assessments confirmed at

Roll Number:	024015802	Assessment:	\$2,690,000
	024015901		\$2,820,000
	024016008		\$2,970,000

DATED AT THE CITY OF CALGARY THIS 22 DAY OF December 2010.



H. Kim

Presiding Officer

APPENDIX "A"**DOCUMENTS RECEIVED AND CONSIDERED BY THE BOARD:**

NO.	ITEM
C1-C3	Complainant Forms for each parcel
C4	Complainant's submission

APPENDIX 'B'**ORAL REPRESENTATIONS**

PERSON APPEARING	CAPACITY
Stephanie Sweeney-Cooper	Altus Group Limited, Complainant
Giovanni Worsley	Altus Group Limited, Complainant
Scott Powell	Assessor, City of Calgary, Respondent

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.*