

**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:

J. Gilmour, PRESIDING OFFICER

M. Peters, MEMBER

I. Zacharopoulos, 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:	028292506
LOCATION ADDRESS:	5483 Falsbridge Drive NE
HEARING NUMBER:	59640
ASSESSMENT:	\$1,510,000

This complaint was heard on the 15th day of December, 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:

- K. Fong Agent, Altus Group Ltd.

Appeared on behalf of the Respondent:

- P. Sembrat Assessor, The City of Calgary

Property Description:

The subject property is a vacant lot located in the community of Falconridge, with a site area of .63 acres. The lot has been vacant for approximately 20 years. The land use description is Commercial – Community 2.

Complainant's Requested Value: \$598,500

Issue:

What is the assessed market value of the vacant lot?

Summary of Complainant's Evidence:

The Complainant agreed that the Board must consider Section 2 of the *Matters Relating to Assessment and Taxation Regulation (MRAT)* as follows:

"An assessment of property based on market value
(b) must be an estimate of the value of the fee simple estate in the property."

The Complainant relied on 2 sales comparables. The first sale was at 151 Walden Gate SE on December 19, 2008 for \$1,308,000 per acre. The lot size was 9.91 acres. The zoning was the same as the subject property.

The second sales comparable was a *post facto* sales which took place in August 2010. This property was located at 267 Walden Gate SE for \$827,000 per acre. The lot size was 1.6 acres.

This evidence seemed to indicate to the Board that the vacant land sale prices were decreasing from the years 2008 to 2010.

The Complainant also relied on 5 equity comparables. The 3 best comparables were properties with improvements on them, located adjacent to the subject. The best comparable was the KFC property located next door at 5335 Falsbridge Drive. It had the same site area as the subject at .63 acres. It also had the same zoning characteristics. The 2010 assessment for this property was \$1,070,000. This property was built in 1988. This property had excellent access to both Falsbridge Drive and Falsbridge Gate.

The Complainant in his rebuttal evidence (EX C-2, Page 24) also referred to CARB Decision ARB 0867/2010-P, dated 22 July 2010, whereby the Board stated:

"Based upon the evidence of the Complainant, it seems that the assessor is of the belief that a vacant, unimproved land parcel is of greater value than a similar sized land parcel that is improved with a successful income-producing commercial enterprise of one type or another. This cannot, logically, be the case and the Composite Assessment Review Board agrees with the Complainant that the assessor has disrupted equity amongst commercial properties located along Macleod Trail South."

Summary of Respondent's Evidence:

The City relied on two land sales, using a formula of applying \$65 per sq. ft. for the first 20,000 sq. ft. of vacant land and the remainder at \$28 per sq. ft. This formula was evidently developed as a result of the two land sales.

The first sale at 304 Canterbury Drive SW was for a vacant land parcel of 20,000 sq. ft. and time adjusted to \$55 per sq. ft. and then adjusted again to \$68.75 for certain influences.

The second sales comparable was located at 151 Walden Gate SE for a lot of 431,000 sq. ft. The time adjusted price for this property was \$30 per sq. ft.

The Respondent also relied on eight equity comparables but only two of these properties were located in the northeast quadrant of the city, and one was the subject property itself.

The assessor argued before the Board that there are two different markets, one for vacant land and the other for income revenue properties. On Page 17 of his evidence (EX R-1) he also stated:

"A rapid increase in land prices in recent years means existing income-producing properties will typically out-compete the "buy land and build" option every time a buyer goes looking for a income stream."

Board's Findings:

The Board agrees with the Complainant's evidence and argument with respect to equity and comparability, especially in light of the KFC property adjacent to the subject property. This comparable, with the same site area and zoning as the subject property, has an improvement on the lot of 2,859 sq. ft. The 2010 assessment for this improved property is \$1,070,000; whereas the assessment of the vacant lot of the subject property is \$1,510,000. The Board agrees with the argument of the Complainant that such a result is both unfair and inequitable.

The Board recognizes the decision of the Supreme Court of Canada in 1881, *Jonas v. Gilbert*, submitted by the Complainant, which identified two paramount principles:

"first, the necessity for fairness and equity, and secondly, the practical effect on the competitive business process where the required fair and equitable imposition of taxation is absent" (EX C-1, Page 61).

Board Decision:

Based on the evidence and argument of both parties, the Board reduces the assessment to \$590,000.

DATED AT THE CITY OF CALGARY THIS 16 DAY OF December 2010.



J. Gilmour
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.*