

**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, Revised Statutes of Alberta 2000 (the Act).

between:

12-10 Capital Corp. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, J. Zezulka
Board Member 1, J. Massey
Board Member 2, K. Farn***

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 2012 Assessment Roll as follows:

ROLL NUMBER: 067233411

LOCATION ADDRESS: 1240 - 10 Avenue S.W.

HEARING NUMBER: 67959

ASSESSMENT: 3,630,000.00

This complaint was heard on the 20 day of June, 2012 at the office of the Assessment Review Board located at Floor Number Four, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom Two.

Appeared on behalf of the Complainant:

- *D. Genereux*

Appeared on behalf of the Respondent:

- *M. Ryan*

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

- (1) There were no procedural or jurisdictional matters to be dealt with.

Property Description:

- (2) The subject is known as the Otis United Technologies Building, located in the west portion of the Beltline district in south west Calgary. The building consists of an original residence built circa 1950, with a 1973 warehouse addition. The building has an assessed area of 11,434 s.f., all of which is considered by the Complainant to be office space. The site size is 27,598 s.f. Site coverage is 41.4 per cent.

Issues:

- (3) The premises are currently assessed as vacant land, at a rate of \$155.00 per s.f. to which the City has applied a negative 15 per cent adjustment for proximity to the C.P. Rail line.
- (4) The Complainant disputes the valuation method. The following is extracted from the Complainant's written argument; *"The Board is requested to reduce the subject incorrect assessment to better reflect;*
1. *assessment of other class "C" office buildings*
 2. *income approach calculations applied to other class "C" office buildings.*
 3. *actual supply and demand characteristics affecting land value".*

Complainant's Requested Value: \$1,430,000

Evidence

- (5) The Board notes that the assessment has decreased from \$4,570,000 in 2011 to the current level in 2012.
- (6) Notwithstanding the issues outlined in Paragraph (4) preceding, the Complainant's argument appears to center on the issue of Highest and Best use, and equity. The Complainant maintains that the assessor has disrupted equity, because the subject has not been valued in the same manner as other class "C" office buildings in the area, but rather has been valued as an undeveloped site, which the assessor maintains is the Highest and Best Use of the site. The Complainant maintains that the City's conclusion of Highest and Best Use does not result in a fair and equitable assessment in relation to similar properties. If the Highest and Best Use for assessment purposes is different than an undeveloped site, then what is the appropriate valuation method, and what are the appropriate inputs to be used?

(7) In support of his position, the Complainant presented a list of 170 vacant sites in the Beltline area. The total land area is 1,908,375 s.f. The average absorption rate is approximately 12,000 s.f. per year. The Complainant reasons that it could take upwards of 159 years to absorb the existing inventory. Given these statistics, the Complainant reasons that no right thinking owner would give up occupation or rental of the subject building in lieu of redevelopment.

(8) The Complainant presented three buildings that he considers comparable to the subject. Each is being assessed as a class "C" office building, using the income approach. The inputs used in the City's income calculations include office rent at \$12.00 and \$13.00 per s.f., vacancy of 10.0 per cent, and capitalization rate of 7.75 per cent. The income calculations produce a median assessment of \$129.00 per s.f. of building. That compares to the subject's assessment of \$317.00 per s.f. of building.

(9) The Complainant's income calculations for the subject, using similar inputs used by the City in comparable class "C" office building assessments, produced an assessment of \$1,430,000.

(10) The Respondent's evidence consisted primarily of three equity comparables, showing vacant land assessments at \$155.00 per s.f.

(11) The Respondent also presented an analysis of the Complainant's comparables. The Respondent's analysis, based on land area rather than building area, showed assessments per s.f. of land area ranging from \$178.30 to \$301.91. The subject's current assessment is \$131.53 per s.f., and the Complainant's request calculates to \$51.82 per s.f. This result, the Respondent contends, creates an inequity.

(12) The Respondent submitted eleven past CARB decisions that support the City's position on Highest and Best Use, and subsequent valuation methodology. While past decisions are sometimes of interest to this Board, they are not considered as evidence, and have only limited value. Without hearing all of the evidence that led to the decision, it is difficult to place much reliance on the result.

Board's Decision

(13) Neither party submitted any evidence to test the accuracy of the City's assessed land rate. The Board is therefore left to speculate that the \$155.00 rate is a reasonable reflection of market value for undeveloped land.

(14) Having said that, looking into the future is conjectural at best. The evidence of the Respondent failed to persuade the Board that alternative uses for the subject property would be manifest in the near future, or even in the foreseeable future. In any Highest and Best Use analysis, an alternative use cannot be based on conjecture and unsupported opinion. The approximate timing of an alternative use is critical, but none was provided in the evidence submitted. And, because assessment of property is an annual, or at least a periodic function, the Highest and Best Use conclusion should be one that can be manifest in the relevant time frame; i.e. the immediate future. Such is not the case in this instance.

(15) Section 289(2) of the Municipal Government Act states (among other things);

"Each assessment must reflect

(a) the characteristics and physical condition of the property on December 31 of the year prior to the

year in which a tax is imposed

As of the relevant date, the subject was being occupied as an office building. There were no development applications, or development permit in place to indicate that a change in use was forthcoming, or even being contemplated.

(16) This Board is also persuaded by the notion of fairness and equity. In this regard, the following from *Stade v. Assessor #23 – Kamloops* provided some guidance;

"Questioning the relationship between assessment and the properties estimated market value is a market value argument, with accuracy the measure of success. Equity instead relates to consistency and fairness of assessment. Consistency requires that similar properties be assessed similarly and that differences be accounted for consistently. Fairness means similar treatment under the law, which typically means that if one group of taxpayers is afforded a privilege, such as underpaying taxes, then everyone should be afforded a similar privilege."

(17) In *Dutchad Bil Investments Ltd. Et al v. Area 19* (2008 PAABBC 20081270) it states;

"The Board must first be satisfied with the accuracy of the market valuation, which involves correct appraisal techniques and appropriate use of market data. Second, the Board must then be satisfied that the level of assessment is equitable, fair, and consistent, in terms of how the subject's assessment relates to other similar properties. The courts have regularly interpreted 'consistency' as the portion of market value being assessed (Bramalea, Lount, supra). In other words, if an appellant can show that other similar properties are typically assessed below actual value, then the subject should receive this benefit too. This need for consistency is particularly apparent for commercial properties, where an unfairly distributed tax burden can give one investor a significant competitive advantage"

(18) In *Peard v. Assessor of Area #01*:

"The Assessment Act and common law require that assessments be equitable as between taxpayers. A Taxpayers land may not be assessed on a view of actual value which results in an assessment significantly higher than would bear a fair and just relationship to assessments on other similar properties as a whole. Where there is a difference between actual value and equity in assessment, the taxpayer is entitled to the lower of the two....."

(19) The subject is still occupied as an office building, in a similar fashion as the income based Comparables submitted in evidence. This Board is persuaded that equity can only be maintained if the subject is assessed on the basis of a class "C" office building, on the same basis as the comparables.

(20) Using the income approach, and adopting a rent of \$12.00 per s.f., with a vacancy allowance of 10 per cent, and a capitalization rate of 7.75 per cent, this Board calculates the revised assessment to be \$1,400,406.

(20) The revised assessment is truncated to \$1,400,000.

DATED AT THE CITY OF CALGARY THIS 4 DAY OF July , 2012.



Jerry Zezulka
Presiding Officer

APPENDIX "A"**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

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1. C1 Complainant Submission of Evidence,
 2. C2 Complainant Rebuttal Submission
 3. R1 City of Calgary Assessment Brief

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.*
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For MGB Administrative Use Only

<i>Decision No. 0677/2012-P</i>		<i>Roll No. 067233411</i>		
<u>Subject</u>	<u>Type</u>	<u>Issue</u>	<u>Detail</u>	<u>Issue</u>
CARB	3. Office	Highest and Best Use	Income approach v. Market Comparison	Method of valuation.