

**CALGARY
COMPOSITE 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

Altus Group Limited, representing Calgary Salvage Disposal Ltd, COMPLAINANT

And

The City Of Calgary, RESPONDENT

Before

***M. Chilibeck, PRESIDING OFFICER
P. McKenna, MEMBER
B. Jerchel, 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 2012 Assessment Roll as follows:

ROLL NUMBER: 200137099

LOCATION ADDRESS: 2015 ALYTH CO SE

HEARING NUMBER: 66392

ASSESSMENT: \$681,000

[1] This complaint was heard by the Composite Assessment Review Board on 3rd day of July, 2012 in Boardroom 4 on Floor Number 4 at the office of the Assessment Review Board located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

R. Worthington

Appeared on behalf of the Respondent:

R.T. Luchak

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

Jurisdiction

[2] Neither party raised any objections to a member of the Board hearing the subject complaint.

Procedural

[3] There were no preliminary matters raised by either party regarding this complaint file.

Property Description:

[4] The subject property is located on Alyth/Bonnybrook Industrial subdivision in the SE quadrant of The City of Calgary. The subject area is surrounded by the Canadian Pacific Railway on the southwest and north and the Blackfoot Trail on the southeast. It is categorized as being located in Non Residential Zone (NRZ) AL1 for assessment purposes. This subject is a vacant parcel of land that contains 1.73 acres or 75,350 sq ft of area.

Issues:

[5] The Complainant identified the matters of an assessment amount and assessment classification on the Assessment Review Board Complaint (complaint form) and attached a list outlining several reasons for the complaint. At the hearing the Complainant advised that the assessment amount is under complaint and the Board identified the issues as follows:

1. Should the subject assessment be reduced by 25% to recognize the limited access to the parcel?
2. Should the subject assessment be further reduced by 30% to recognize site contamination?

Complainant's Requested Value: \$306,450

Board's Findings in Respect of Each Issue:

[6] The subject land is vacant and assessed at \$525,000 per acre less a negative influence adjustment of 25% for shape. The subject has five boundaries, one of which is curved to follow the contour of the adjacent railway track. The land configuration results in two acute angles.

[7] The Complainant is requesting a change in the assessment to recognize two additional

negative influences; restricted access to the area at 25% and site contamination at 30% that results in a requested value of \$306,500.

1) Limited Access

[8] The Complainant argued that access to the subject parcel is affected negatively by the limited/restricted access to the area, impeded by the railway tracks that cross 15th Street and by the quality of the road infrastructure in the area of the subject. There are two access points to the area that are not considered ideal for industrial transportation, one is the access point from the north via Ninth avenue and 15th Street that requires crossing railway tracks and the other is from the east at Blackfoot Trail and Alyth Road. The railway crossing on 15th Street restricts the access when long trains occupy the tracks or when a rolling train occupies the track for a long period of time. The road infrastructure does not include typical asphalt pavement, curbs, gutter and sidewalks. The pavement is of inferior quality and some of the roads are gravelled and rough.

[9] The Complainant also argued that the subject should be reduced when compared to land in the area to the west of the subject, referred to as the Portland area. This area has several access points and the quality of the access roads is superior to the subject. Despite this, the land in both areas is assessed at \$525,000 per acre.

[10] CARB decision 1120-2011P regarding the subject property was referenced by the Complainant and asserted that the circumstances have not changed since the decision was made and therefore the decision should be the same for the 2012 complaint.

[11] The Respondent contended that the subject is not hindered by limited or restricted access. There is access to the area and the subject by way of Blackfoot Trail and 15th Street, Blackfoot Trail and Alyth Rd and Ninth Avenue and 15th Street.

[12] The Respondent also contended that the negative shape adjustment included in the property assessment of the subject should be removed. This adjustment was given for the rounded (curved) boundary and he contends that this boundary does not restrict the development or the functionality of the subject.

[13] The Board finds last years' CARB, in decision 1120-2011P, was of the opinion access is limited to the subjects' area; this Board considers the determination (as to whether access is limited) depends on access to the property or parcel of land. Determination of limited access to the area as the basis for an adjustment to the subject would mean all properties in the area qualify for the adjustment.

[14] The Board finds the maps and aerial photos show that the access to the subject property and area is not limited. The maps show that the primary access to be at Blackfoot Trail and 15th Street and the secondary access point to be via Ninth Avenue and 15th Street. The Board finds the third access point at Blackfoot Trail and Alyth Road could also be used to access the subject. As to the quality of the access or physical condition and characteristics of the infrastructure, the Board notes the differences between the subject and the Portland Street area; however the Complainant did not provide any information, such as property sales, as to what effect this would have on the value of the subject. Also the Complainant did not quantify the adjustment amount nor provide any other supporting evidence.

2) Site Contamination

[15] The Complainant also argued that the subject assessment should be negatively adjusted to recognize that the parcel is contaminated. A copy of a Phase 2 Environmental Assessment by Thurber Environmental Consultants Ltd. dated September, 1999 was disclosed in evidence to support the requested reduction of 30%. A copy of the Respondents' influence chart was disclosed in evidence showing the adjustment for Environmental Concerns is up to -30%

[16] The Respondent argued that the Thurber report is dated (being September 1999) and a more recent report (together with quantification) of the contamination and related cost to cure would assist in determining the amount of adjustment and asserted that the practice/policy of the Respondent is to recognize an adjustment for contamination upon receipt of a Phase 2 report that identifies the degree of contamination and the related cost to remedy the soil to below CCME commercial levels and the adjustment would be to a maximum of 30% or the cost to remediate, whichever is less.

[17] The Board (like last years CARB) finds contamination is an issue affecting the subject property; however, this Board is not persuaded to allow an adjustment for contamination. The onus is always on the person who asserts an allegation. Here the Complainant asserts that the subject is contaminated and that it is entitled to an adjustment. The Thurber report is some 12 years old and no update was provided on the current or more recent status of the contamination and the cost to remediate the subject property.

[18] According to the Onus of Proof document from the Complainant, it states:

It has often been stated that "a fundamental requirement of any judicial system is that the person who desires the court to take action must prove his case to its satisfaction...These general principles have been refined further to include the following premises:

- a) That the onus is always on a person who asserts a proposition of fact that is not self evident; and
- b) That where the subject matter of the allegation lies particularly within the knowledge of one of the parties, that party must prove it whether it be of an affirmative or negative character...

[19] In this case, the Board affirms that the onus is on the Complainant to supply more recent information that would quantify the extent of the contamination and the associated remedy costs. If this is not in the possession of the Complainant/owner, the burden or onus of proof lies with the Complainant to prove and support the extent of the relief/adjustment requested in the assessment of the subject.

[20] Without the quantification and associated remediation cost, the Board is not able to make an adjustment as requested.

Board's Decision:

[21] The Board confirms the assessment at \$681,000.

DATED AT THE CITY OF CALGARY THIS 7 DAY OF August 2012.

A handwritten signature in cursive script, appearing to read 'M. Chilibeck', is written over a horizontal line.

M. Chilibeck
Presiding Officer

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD**

Decision No. 046-0741-2012P			Roll No. 200137099	
<u>Complaint Type</u>	<u>Property Type</u>	<u>Property Sub-Type</u>	<u>Issue</u>	<u>Sub-Issue</u>
CARB	Other Property	Vacant Land	Cost/Sales Approach	Land Value