

**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:

***1323785 Alberta Ltd.
(as represented by Altus Group Limited), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***J. Krysa, PRESIDING OFFICER
J. Rankin, MEMBER
A. Wong, 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 2011 Assessment Roll as follows:

ROLL NUMBER:	031023807
LOCATION ADDRESS:	2622 39 Avenue NE
HEARING NUMBER:	63231
ASSESSMENT:	\$11,980,000

The complaint was heard on July 22, 2011, in Boardroom 12 at the office of the Assessment Review Board, located at 1212 – 31 Avenue NE, Calgary, Alberta.

Appeared on behalf of the Complainant:

- D. Hamilton

Appeared on behalf of the Respondent:

- R. Powell; P. Frank (Counsel)

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

In response to a request by Counsel for the Respondent, the Complainant's witness, D. Hamilton, and the Respondent's witnesses, R. Powell and S. Cook were sworn in by the Board at an earlier hearing, and remain under oath for this proceeding.

The Board heard argument with respect to qualification of witnesses from both parties at an earlier hearing, and the Board accepts D. Hamilton (witness for the Complainant), is not an expert witness; however, is qualified to give opinion evidence with respect to the assessment of hotel properties as a result of extensive experience in reviewing hotel assessments. There was no objection to this qualification by the Respondent.

The Board further accepts S. Powell (witness for the Respondent), is not an expert witness; however, is qualified to give opinion evidence with respect to the assessment of hotel properties by virtue of his delegated authority pursuant to section 284(1)(d) of the Act. There was no objection to this qualification by the Complainant.

The parties asked that the Board consider arguments made in a previous hearing (File #63389), in the context of the evidence in this matter. The Board agrees to do so.

Property Description:

The subject property is a 133,800 sq.ft. (square foot) parcel of land improved with a four storey, 120 room, limited service hotel, constructed in 2000 and known as the Lakeview Signature Inn, Calgary Airport. Amenities include a small dining area for a breakfast buffet, fitness and aquatic facilities, and exterior surface parking.

Issues:

The Complainant raised the following matters in section 4 of the complaint form:

3. an assessment amount
4. an assessment class

At the commencement of the hearing the Complainant withdrew matter 4, and indicated that the evidence and submissions would only apply to matter 3, an assessment amount.

The Complainant set out 15 grounds for the complaint in section 5 of the complaint form with a requested assessment of \$9,260,000; however, the Complainant's evidence submission identified only the following issues to be in dispute: [C1, pp.7-9]

Issue 1: The stabilized actual income and expenses should be used to calculate the hotel assessment. The actual net operating income attributable to the real estate is \$1,286,555 in contrast to the amount determined by the assessor to be \$1,378,775.

Issue 2: The capitalization rate should be increased by one point to reflect the increased risk as a result of the announced closure of Barlow Trail.

At the commencement of the hearing the Complainant withdrew Issue 1, set out above.

Complainant's Requested Value:

The Complainant's evidence set out the requested assessment at \$10,292,000 [C1, p.7], however, it was revised to \$11,030,000 as a result of withdrawing Issue 1.

Parties' Positions

Issue 2: The capitalization rate should be increased by one point to reflect the increased risk as a result of the announced closure of Barlow Trail.

The Complainant argued that the announced closure of Barlow Trail, a major access route to the Calgary Airport from the subject property would affect the risk associated with maintaining the subject's current income stream; therefore a higher capitalization rate is warranted. In support of this argument, the Complainant provided a letter, dated May 3, 2010, from Heidi Van Aerden, General Manager of the subject hotel identifying an anticipated 5 to 10% decline in occupancy levels as a result of the impact of the closure of Barlow Trail, as well as an estimated \$1,000 to \$2,000 per month increased mileage and fuel costs associated with providing a shuttle service to the airport via a longer route [C1, p.25].

The Complainant argued that this letter was concrete evidence that the hotel speculates that revenues will decline and expenses will increase following the closure of Barlow Trail, and calculated that reduction to income at \$430,663 and the increase to expenses at \$18,000. From these calculations, the Complainant concluded that the capitalization rate should be increased from 11.5% to 12.5% [C1, pp.7-9].

The Respondent argued that the closure of Barlow Trail as of April 3, 2011, is subsequent to both the legislated valuation date of July 01, 2010, and the legislated date respecting the characteristics and physical condition of the property of December 31, 2010; as such the closure of the road is not relevant with respect to the current assessment. The Respondent submitted that this issue was also heard by the Municipal Government Board in MGB 106/10 concerning the Sheraton Cavalier Hotel, located along Barlow Trail in the vicinity of the subject property, and the Board in that instance maintained the assessment without an adjustment to the capitalization rate as sought by the Complainant.

The Respondent also argued that Ms. Van Aerden's estimate of future occupancy was speculative and unsupported by any analysis, or proper forecasting methods; and that a drop in occupancy may not necessarily translate into a corresponding drop in revenues.

The Respondent further argued that the Complainant's calculated room revenue decline did not correlate to a 12.5% capitalization rate conclusion as suggested, and there was no market evidence to support a 12.5% capitalization rate for the subject. The Respondent added that as the subject is an extended stay hotel, it would likely be least affected by the road closure as many of the hotel's guests would not need to travel to the airport daily.

Decision: Issue 2

The Board finds that there was insufficient evidence to support the requested increase to the capitalization rate to reflect any increased risk associated with the future closure of Barlow Trail.

The Board referred to section 289(2) of the Act, which states:

289(2) *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 under Part 10 in respect of the property, and

(b) the valuation and other standards set out in the regulations for that property.

In this instance the Board finds that the characteristics of the property as of December 31, 2010 are properly reflected in the current assessment; the subsequent closure of Barlow Trail on April 3, 2011 should be reflected in the characteristics as of December 31, 2011 for taxation in 2012.

The opinion evidence of Ms. Van Aerden was afforded little weight as there was no documentary evidence or basis of support for the author's opinion. Further, the opinion was found to be highly speculative as the letter was dated some 11 months before Barlow Trail was closed.

As there was no market evidence of hotel capitalization rates with respect to the impact of the closure of Barlow Trail, the Board was unable to make a finding of fact with respect to this issue.

The Board finds that issue #4 in MGB 106/10 is very similar to the current matter, and the Board reiterates the reasons as set out in MGB 106/10, insofar as they relate to the similar arguments made in the hearing of this matter.

Board Decision:

The assessment is confirmed at **\$11,980,000.**

DATED AT THE CITY OF CALGARY THIS

8

DAY OF SEPTEMBER, 2011.


J. Krysa,
Presiding Officer

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

NO.	ITEM
1. C1	Complainant's Submission
2. R1	Respondent's Submission
3. C2	Complainant's Rebuttal Submission

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.*