

**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:**

***Shepard Development Corporation, COMPLAINANT (as represented by Altus Group Limited)***

**and**

***The City of Calgary,  
RESPONDENT***

**before:**

***J. Dawson, PRESIDING OFFICER  
S. Rourke, MEMBER  
A. Zindler, 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:

<b>ROLL NUMBER:</b>	<b>201314937</b>
<b>LOCATION ADDRESS:</b>	<b>200, 5126 – 126 AVE SE</b>
<b>HEARING NUMBER:</b>	<b>63053</b>
<b>ASSESSMENT:</b>	<b>\$5,380,000</b>

This complaint was heard on 30<sup>th</sup> day of June, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- D. Mewha      *Agent, Altus Group Limited*

Appeared on behalf of the Respondent:

- C. Lee              *Assessor, The City of Calgary*
- J. Young          *Assessor, The City of Calgary*

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

- 1) Mr. J. Young raised an objection to the inclusion of rent rolls in Rebuttal Document C26, he further acknowledged that it was the same issue he had raised during the hearing for Roll Number 117005207, Decision Number CARB 1108/2011-P and he had accepted the board's decision but wanted his objection noted on record. As this hearings evidence is tied to 2 additional hearings, the decision follows. The board did not recess or deliberate on this matter as we agreed the issue had been addressed previously.

For greater clarity in the hearing for Roll Number 117005207, Decision Number CARB 1108/2011-P the objection raised was regarding the inclusion of certain pages of the rebuttal Document C5 as it included new evidence which is contrary to the purpose of rebuttal:

- a. Page 6; upon the objection being raised the Complainant agreed to the objection and the page was removed from the record.
  - b. Pages 23–28 and supporting pages; an objection was raised by the Respondent that the right columns labelled "Market NOI" was new information. Complainant responded by indicating that information is not being relied on for the requested value and clarifies only information provided by the Respondent. The board recessed to make a decision and decided that the information may be used by the Complainant. As this document is tied to 9 additional hearings, this decision follows.
- 2) During the presentation from the Respondent there was an objection raised by Mr. D. Mewha regarding a Composite Assessment Review Board (CARB) decision being distributed by Mr. J. Young on the grounds it was not admitted into evidence and submitted as legislated through Alberta Regulation 310/2009, Matters Relating to Assessment Complaints Regulation (MRAC) section 9(2);  
*"A composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 8."*

The board recessed to consider the matter and determined that this issue has been addressed by Calgary Assessment Review Board Policies and Procedural Rules, March 2011 where it states in 37(8);

*"A decision of a court or tribunal may be considered by the Board in a complaint hearing even where such a decision has not been provided in disclosure"*

*materials, and court or tribunal decisions shall not be marked as exhibits, nor do they form part of the Board record."*

The board reconvened and permitted the CARB decision to be distributed and when the Respondent finished their presentation all copies of the CARB decision were returned to the Respondent. The CARB decision was not marked as an exhibit and no record of the CARB decision has been retained for the official record.

- 3) No additional objections on procedure or jurisdiction were raised.

**Property Description:**

The subject property is an Industrial-General (I-G) land use property located in the East Shepard Industrial area. The subject site has an area of 1.36 acres providing site coverage of 35.11% with two buildings on site; 1) first building occupies a footprint of 8,800 square feet and with an assessable building area of 12,800 square feet built in 2009 with an office finish of 63% and is an Industrial Warehouse Multiple Tenant (IW M) type building, and 2) second building occupies a footprint of 12,000 square feet and with an assessable area of 19,200 square feet built in 2009 with an office finish of 75% and is an Industrial Warehouse Single Tenant (IW S) type building.

**Issues:**

The Complainant identified two issues on the complaint form:

1. Assessment amount is incorrect
2. Assessment class is incorrect

The disclosure documents and board submissions resulted in the identification of this one issue:

3. Equity

**Complainant's Requested Value:** \$4,190,000 (complaint form)  
\$4,670,000 (disclosure and hearing)

**Summary of Complainant Evidence:**

Complainant reviewed the subject assessment detail summary, map, and photographs found in Document C25 (pages 1–10). Complainant reviewed the equity comparables in argument of inequity (page 18). Complainant provided a Composite Review Board (CARB) decision from 2010 of the subject property. The Complainant summarized their conclusion to arrive at the requested value truncated to \$4,670,000.

**Summary of Respondent Evidence:**

Respondent provided Document R11 then reviewed legislative authority (page 3), fairness and equity in mass appraisal (page 5), property valuation methodology (page 7), the sales comparison approach (page 8), burden of proof or onus of the parties (page 9), summary of

testimonial evidence (page 11), and an overview of case law relating to Bentall and Bramalea (page 12). Respondent further reviewed subject maps (pages 14–15), photographs (page 16) and the subject's 2011 Assessment Explanation Supplement (AES) (page 18). Respondent continued with equity comparables (pages 19–20), sales comparables (page 21), responses to Complainant's equity comparables (page 23), and Multi-building write-up (page 24). Respondent provided a conclusion to support their requested assessment.

### **Summary of Complainant Rebuttal:**

Complainant provided for this hearing Rebuttal Document C26. Complainant spoke to and provided evidence regarding Composite Assessment Review Board (CARB) decisions from 2010 in response to the Respondent comparables. In particular the Complainant found that sales comparable Roll Number 137037800 located at 4115 – 116 Ave SE was in question as per Decision Number CARB 1400/2010-P in that the sale was negotiated in 2007 but did not close until 2009. In addition the sales comparable Roll Number 200921278 located at 4398 – 112 Ave SE was in question as per Decision Number CARB 1352/2010-P in that the sale consisted of a property developed for a specific tenant with higher-than-normal rent. Complainant also provided clarification and additional information regarding the following properties; a) 12001A – 44 St SE (pages 13–14 and 19–21), b) 7025 – 44 St SE (pages 15–18), c) 5472A – 56 Ave SE (page 22), and d) 4550 – 35 St SE (pages 23–27) Complainant provided rent rolls to support their case (pages 28–39).

### **Board's Decision in Respect of Each Matter or Issue:**

The Complainant did not provide any disclosure or argument regarding the second issue being "Assessment class is incorrect", the first issue identified on the complaint form related to "Assessment amount is incorrect" and was further identified through one secondary issue being:

3. Equity; the Complainant made an argument that because of a past decision from the CARB in 2010 on the subject property and because of equity comparables that this board should reduce the assessment in the same way. The board carefully considered the request and have determined;
  - a. there is market data to provide a valuation on the Direct Sales Comparison Approach and income information to provide a valuation on the Income Approach,
  - b. this board is not bound by a previous board decision,
  - c. after carefully reading the British Columbia Court of Appeal decision regarding Bramalea Ltd. v. British Columbia (Assessor of Area 9 (Vancouver)), that equity must exist between properties of a municipality, and
  - d. after carefully reading the Supreme Court of British Columbia decision regarding Bentall Retail Services Inc v. Assessor of Area 9 – Vancouver, that equity must exist between properties of a municipality but not specifically any property of the Complainant's choosing rather similar properties located within the municipality as a whole. Bentall also provides further direction in that a valuation method must be used unless there is no evidence of market data or income information;  
*Paragraph [138] "I also reject the Appellants' assertion that "an assessment can be built on equity alone." This assertion stems exclusively from GDP, where the evidence presented a unique set of circumstances; there was no evidence at all from which actual value could be determined. Consequently,*

*there was no alternative but to employ an equity method of assessment. That case is significantly different from the case at bar, where there is ample evidence of market data which enabled the Board to reject the Appellants' novel equity approach as an unsound appraisal methodology. ..."*

upon weighing all the evidence before us, the board determined that there is no evidence provided to support a valuation method and that equity alone does not justify altering the assessment.

**Board's Decision:**

After considering all the evidence and argument before the board the complaint is denied and the assessment is confirmed at \$5,380,000.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF July 2011.

  
J. Dawson  
Presiding Officer

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

<b>NO.</b>	<b>ITEM</b>
1. C25	Complainant Disclosure – Evidence Submission
2. R11	Respondent Disclosure – Assessment Brief
3. C26	Rebuttal Document

*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.*