

**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:

Superior Holdings Ltd. (as represented by Altus Group Limited), COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

K. D. Kelly, PRESIDING OFFICER

J. Pratt, MEMBER

D. Pollard, 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:	068241207
LOCATION ADDRESS:	112 – 17 AV SE
HEARING NUMBER:	68508
ASSESSMENT:	\$6,820,000

This complaint was heard on 26th day of July, 2012 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *Mr. D. Genereux – Altus Group Limited*

Appeared on behalf of the Respondent:

- *Mr. R. Natyshen - Assessor – City of Calgary*

REGARDING BREVITY:

[1] The Composite Assessment Review Board (CARB) reviewed all the evidence submitted by both parties. The extensive nature of the submissions dictated that in some instances certain evidence was found to be more relevant than others. The CARB will restrict its comments to the items it found to be most relevant.

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

[2] None.

Property Description:

[3] The subject is a 41,958 square foot (SF) two-parcel site improved with a 26,907 SF one-storey wood frame and concrete block building used for automotive purposes. The main building was built in 1939 and an extension was added in 1964. The City has classified the structure as a 1964, "C" quality building in its 2012 Property Assessment Summary Report. The structure straddles two legally titled lots which are owned by the same party, and therefore the City has cancelled the roll number on one of the lots and assessed both lots as if they were one vacant parcel. The subject 41,958 SF is assessed at \$155 per SF – plus a 5% premium corner lot influence, (i.e. \$162.75 per SF) for an assessment of \$6,820,000.

[4] **Issues:**

1. The assessment is in excess of market due to incorrect methodology and input factors in the assessment calculation, and this is inequitable

[5] **Complainant's Requested Value:** \$1,690,000.

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

Issue #1

[6] The Complainant argued that the Respondent City has assessed the subject as if it were a vacant land parcel which is incorrect. He stressed that the subject is a vibrant business operation in a functional building and therefore the site should be assessed using the "Income Approach to Value" instead.

[7] The Complainant argued that the City's Property Assessment Summary Report has classified the age and condition of the subject as 1964 and "C" quality respectively, which is incorrect. He suggested that the improvements are of 1939 vintage, and the quality should be "D". He argued that these incorrect inputs improperly elevate the site's value in the City's assessment model.

[8] The Complainant provided a chart containing five property comparables from 1st ST SW; 8th ST SW; and 11 AV SW. He argued that these five sites were improved with superior "B" and "AA" Class buildings which were assessed - on the basis of building area, not land value - at a median value of \$176 per SF. He argued that the subject's assessment of \$6,820,000, when divided by its building area of 26,907 SF indicates a value of \$253 per SF. He considered this to be an inequitable situation for the subject.

[9] The Complainant argued extensively that the subject was assessed by the City on the basis of a "Highest and Best Use" methodology and it failed to apply that methodology correctly. He argued that the City failed to consider that re-development of the site is not imminent and is not even contemplated, and this is a key factor to consider when using this methodology. The Complainant offered an extensive range of documentation from professional organizations and Quasi-judicial (CARB) Decisions, to support his position. In particular he referenced CARB 0677/2012-P and MGB Decision [2004] AMGBO No. 095-04.

[10] The Complainant argued that the City must assess what is there and not what might be, pursuant to a "Highest and Best" Use methodology. He argued that the City has valued the site as vacant land without any documentation or study, and thus there is no support for either the City's assessment methodology or the \$155 per SF value used. He argued that when the use changes on a property, that's when the assessment changes.

[11] The Complainant referenced five market sale comparables advanced by the Respondent in Brief R-1 and argued that two of them are directly exposed to and effectively fronting on Macleod Trail SE. He argued that Macleod Trail properties attract a significantly higher value than those properties further west along 17 AV SE, and therefore they should not be used to calculate indicated value for the subject.

[12] The Complainant argued that Altus has calculated that an inventory of 1,908,375 SF of vacant land exists in the city's beltline and it would take 159 years to develop it all at current absorption rates. Therefore, he argued, it is inappropriate to value the subject as a vacant land parcel, and on the basis of the market value of a limited number of sales.

[13] The Complainant argued that the "Income Approach to Value" must be used to assess the subject. He argued that by using a \$7.52 rent from the site's business assessment notice, and an indicated 8.75% Capitalization Rate from analysis of beltline office buildings, along with "typical" ancillary inputs, an indicated value for the subject is \$1,690,000 and not the assessed \$6,820,000. He argued that inherent in the Income Approach is the value of the land.

[14] The Respondent argued that provincial legislation requires that the City must assess all properties at their fair market value – and in the case of the subject, that is the land value. He argued that legislation governing Mass Appraisal and proper appraisal practice, dictates that a property cannot be valued less than its land value. He argued that Board Decision ARB 1191/2010-P confirms this principle and states in part:

"....The assessor went on to say that the value derived through application of the Income Approach, as applied by the Complainant was less than the bare land value estimated for the subject property and that is precisely why the land value has been applied. The reasoning of the Assessor is clear to the CARB and it is based upon well founded valuation theory. If the improvements to a given property are of such an age or design or other influence that results in that property being incapable of producing a capitalized income value that exceeds the established land value, then the land value represents the market value of the property."

[15] The Respondent argued that an assessor is not restricted to any one methodology but may select the one that more closely approximates market value as of July 1 of the assessment year. Board Decision ARB 0522/2010-P also supports this principle and states in part:

"....The legislation and attendant regulations do not identify the valuation approach chosen by an assessment authority to prepare assessments for non-residential property to be the subject of a complaint to or adjudication by a Composite Assessment Review Board. Assessors routinely use any and/or all three generally accepted valuation approaches to property assessment (1.e. the direct sales comparison approach, the capitalized income approach or the cost approach) to establish values."

"In short, the Board does not intend to identify preference on the valuation approach used by either of the parties to this complaint, or any of the other complaints which fall within the scope of MGA Section 460 (5). Composite Assessment Review Boards judge the fairness and equity of the assessments which result from the valuation process, not the valuation process itself. The process is subject to audit under MRAT Article 10 with respect to quality standards, but not to complaint adjudication by CARB's."

[16] The Respondent provided copies of Decisions CARB 0801-2011-P; CARB 2536/2011-P; CARB 1612-2011-P; CARB 2620-2011-P; CARB 1974/2011-P; CARB 1973/2011-P; CARB 2486/2011-P; and CARB 2372/2011-P in support of the foregoing arguments.

[17] The Respondent clarified that current zoning on the property permits a new building three times the size of the 41,958 SF subject site, or 125,874 SF, which compares to the subject's 26,907 SF building at only 21% of allowed maximum. He argued that while the subject is assessed at a land value of \$155 per SF, the owner of the site would be unlikely to agree to sell his property for \$40 per SF, which is the land value ascribed to the subject by the Complainant using his requested \$1,690,000.

[18] The Respondent argued that "based on this information, it is reasonable to suggest that the income approach to value for assessment purposes cannot represent market value for the subject property and instead the most reasonable representation of market value is the land value of this parcel."

[19] The Respondent argued that the Complainant has provided no current market sales evidence to refute or otherwise challenge the \$155 per SF applied to the subject's 41,958 SF of land. He confirmed that because the subject is assessed as land value only, the building statistics for the subject, and for his property comparables and their respective "Quality" ratings, which were advanced and argued by the Complainant, are irrelevant.

[20] The Respondent also argued that the Complainant's Income Approach calculations for the subject are flawed because he used incorrect or unsubstantiated inputs. He argued the Complainant improperly calculated the subject's "actual" rental value by simply dividing the Business assessment value of \$202,332 by the total square footage of the building to derive a value of \$7.52 per SF. He clarified that one third of the building's assessable space is "storage" and would have been assessed at \$3 per SF and not \$7.52 per SF. Therefore, he argued, the Complainant's value conclusion as to an actual site rent for the subject is flawed.

[21] In addition, the Respondent argued that the Complainant has used an inferred capitalization rate for beltline office space with an inferred, undefined, additional "risk factor" to arrive at an indicated Cap Rate of 8.75%, which the Respondent argued was not supported by any documented market evidence. Therefore, he argued, the Complainant's calculated value of \$1,690,000 using a \$7.52 per SF rent rate, and an 8.75% cap rate in his Income Approach to Value, is flawed and unreliable.

[22] The Respondent also argued that the Complainant's calculated value of \$253 per SF for the subject is based on dividing the current assessment of \$6,820,000 by the square footage of its improvements which is erroneous. The subject has been assessed on the basis of its land value at \$155 per SF, and not pursuant to any of its improvements.

[23] The Respondent also argued that because the subject has been assessed as if vacant land, the Complainant's arguments regarding the City having improperly applied a "Highest and Best Use" analysis are incorrect and not relevant. He clarified that based on extensive study of the current vacant land market in the beltline in the current assessment cycle, \$155 per SF was identified and used for the subject and all similar beltline properties. This creates and maintains equity he argued. Therefore, he continued, for the Complainant to suggest that the City used the \$155 per SF land value without detailed analysis and study, is misleading and erroneous.

[24] The Respondent provided a chart of five property comparables – four along 17 AV SE and one along 15 AV SE nearby the subject which he argued supported the assessment as fair and equitable. All were assessed at \$155 per SF, with two assessed at \$162 per SF to account for a positive corner lot influence (i.e. a 5% premium over \$155 per SF). He noted that two of the property comparables were vacant land parcels and three were improved like the subject.

[25] The Respondent also noted that the subject's assessment was reduced from \$8,590,000 in 2011 to \$6,820,000 in 2012 - a 21% reduction year-over-year. He requested that the assessment be confirmed.

Board Findings

[26] The Board finds that the subject was assessed by the Respondent as land value only by using the "Market Approach to Value" methodology and not a "Highest and Best Use" analysis, as alleged by the Complainant. Therefore the Complainant's considerable evidence and argument regarding this issue, including those relating to "Quality", is not germane.

[27] The Board finds that while the Complainant briefly argued in response to questions from the Respondent that the \$155 per SF used to assess the subject generally was "too high", he has in fact provided no market evidence to demonstrate that \$155 per SF is incorrect or inequitable.

[28] The Board finds that while it may have regard to, and is not fettered by previous Board decisions, the portions of ARB 1191/2010-P and ARB 0522/2010-P cited by the Respondent are relevant to this hearing.

[29] The Board finds that the Respondent is governed by relevant provincial legislation regarding the preparation of assessments under Mass Appraisal and must prepare assessments based on current market data for each new assessment year. In the case of the subject property, the City has done this.

[30] The Board finds that the Respondent, when using the Mass Appraisal process, is not fettered by previous Board decisions.

[31] The Board finds that the Complainant's requested assessment of \$1,690,000 for the subject equates to \$40 per SF of land, which is not supported by the Complainant's own equity evidence, or any other evidence before this Board, and is therefore an incorrect and unreasonable value.

[32] The Board finds that the Income Approach proposed by the Complainant uses both incorrect rents, and undocumented (by market evidence) inferred cap rate inputs which are not supported by the data supplied, and hence his calculated values are considered to be unreliable.

[33] The Board finds that the Respondent Assessor is bound by statute to identify fair market value using whatever methodology is appropriate to the circumstances, and in doing so, cannot value a property less than its market value.

[34] The Board finds that in reference to the Complainant's chart of five property comparables on page 49 of C-1, when the assessed value of each site is divided by the square footage of the improvement, the values range from \$191.61 per SF to \$322.33 per SF with an average of \$241.19 per SF. This range of values accords with the Complainant's own calculation of \$253 per SF for the subject. Therefore, the Complainant's own evidence supports the assessment as fair and equitable.

Board's Decision:

[35] The assessment is confirmed at \$6,820,000.

DATED AT THE CITY OF CALGARY THIS 8th DAY OF Aug. 2012.


K. D. Kelly
Presiding Officer

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

NO.	ITEM
1. C-1	Complainant Disclosure
2. R-1	Respondent Disclosure

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.*

For Administrative Use Only

Appeal Type	Property Type	Property Sub-type	Issue	Sub-Issue
CARB	Commercial/industrial land - auto services	improved land parcel	Data corrections - market value	Income approach