

**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:

Altus Group Ltd., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Board Chair, I. WELESCHUK
Board Member, H. ANG
Board Member, E. REUTHER***

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:	031004393
LOCATION ADDRESS:	3321 27 Street NE
HEARING NUMBER:	64184
ASSESSMENT:	\$8,510,000

This complaint was heard on 7th day of July, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 10.

Appeared on behalf of the Complainant:

- *Andrew Izard – Representing Altus Group Ltd. – as agent for Enright Capital Ltd.*

Appeared on behalf of the Respondent:

- *David Zhau – Representing the City of Calgary*

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

The Board derives its authority to make this decision under Part 11 of the Municipal Government Act. The parties did not have any objections to the panel representing the Board and constituted to hear the matter. No jurisdictional or procedural matters were raised at the onset of the hearing, and the Board proceeded to hear the merits of the complaint, as outlined below.

Property Description:

The subject property is located at 3321 27 Street NE. It is an improved retail strip centre constructed in 1981 in the Horizon subdivision in northeast Calgary. The area is a mix of retail, office and light industrial uses. The subject is legally described as Horizon Industrial Estates Calgary Plan 7810796 Block 2 Lot 13 and 14 on Certificate of Title 051 325 488 and as Plan 7810796 Block 2 Lot 15 on Certificate of Title 051 325 488+1. These are three contiguous parcels owned by the same entity, developed as one property and consolidated into one Assessment Roll Number.

Issues:

1. What is the correct land area of the subject property?
2. What is the correct assessed value for the subject property?

Complainant's Requested Value: \$4,630,000

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

1. What is the correct size of the subject?

The 2011 Property Assessment Notice and Summary Report indicated that the property was 263,070 square feet (sf), 24,440 square meters (sm), or 6.04 acres. Both parties agree that this was incorrect.

The Complainant provided evidence, based primarily on using the City of Calgary's assessment mapping software. Based on their evidence, the Complainant indicated that the correct size of the property was 131,200 sf or 3.01 acres.

The Respondent used the same program and source data to calculate an area of 131,173 sf.

Board's Findings:

The two parties agree that the correct size of the subject property is 131,200 sf. Based on the evidence provided by both parties, the Board concludes that the correct size of the property is 131,200 sf.

2. What is the correct assessed value?

The Complainant argued that the matter before the Board was simply that of determining the correct area. Once the correct area is determined, it should be applied to the Original Assessment Valuation, based on a sales approach. This would involve assessing the first 20,000 sf at a rate of \$65.00/sf and the remainder of the area at \$28.00/sf. This total would then have a +5% adjustment applied to recognize corner lot influence, to result in the corrected assessed value of \$4,630,000.

To support the position that the City uses the sales approach for similar properties in the area, the Complainant presented four comparable properties in the subject area. In one case, the size of the property was also incorrectly stated on its Assessment Summary.

The Respondent's evidence also provided an updated assessment using this same sales approach, resulting in an assessed value of \$4,633,486. However, the Respondent did not agree that this was the correct approach to determining assessment. (The slight difference between the two calculations is due to a slight difference in total area used by the respective parties.)

The Respondent stated that the purpose of an assessment is to reflect the market value, as defined in the Municipal Government Act (Section 1(n)). The City's policy is to calculate a market value using both the direct sales and income approaches and then to use the higher value as the assessed value. This policy is to recognize properties where the value of the land exceeds the income derived from the improvements. Once the size correction was recognized, the income approach resulted in the higher value for the subject property, based on the City's assessment models. On that basis, the Respondent stated that the correct assessment is \$7,570,000.

The Respondent's evidence consisted of a two page summary showing the Income Approach Valuation for the subject using "typical" values for rents for each use type, and adjustment factors. In response to questions, the Respondent could not provide any information regarding the comparable data used to arrive at the typical rental rates, or any other factors used in the calculation. The Respondent merely stated that the calculation is consistent with the assessment model used by the City for this type of property. As part of the documentary evidence, the Respondent included a copy of the Assessment Request for Information for the subject property, showing the lease details for the tenants.

In Rebuttal, the Complainant presented its own income approach calculation using the all the same factors used in the Respondent's income calculation, except for the rental rates. The Respondent confirmed that the Complainant's calculation was exactly as the Respondent's with the exception of the rental rates. The Complainant used rental rates that reflected the actual rates being achieved by the subject property and calculated an assessed value of \$6,540,000 for the subject. The Complainant stated that the correct assessed value is \$4,640,000. In the alternative, if the Board finds that the income approach is appropriate, the correct assessed value is \$6,540,000.

The Complainant concluded with the argument that the burden of proof first falls on the Complainant to demonstrate that the assessed value is not correct. If this is demonstrated, then the onus shifts to the Respondent to demonstrate that its assessed value is correct. The Complainant stated that it believed it had demonstrated that the original assessed value was incorrect.

Board's Findings:

With regard to what issues are appropriately before the Board, Section 467(1) of the Act states:

"An assessment review board may, with respect to any matter referred to in Section 460(5), make a change to an assessment roll or tax roll or decide that no change is required."

In this case, because of the error in the size of the subject property, a change to the assessment is appropriate. Having determined that the Original Assessment was not correct, the Board must now consider, what is the correct assessed value. The Board notes that under the Matters Relating to Assessment and Taxation Regulation (MRAT):

“4(1) The valuation standard for a parcel of land is

(a) Market value,”

Simply changing the areas to their corrected values and applying the sales approach as used in the Original Assessment does not result in market value. Both the Complainant and Respondent provided an income approach calculation which resulted in a value considerably higher than the \$4,630,000± value calculated using the sales approach and the corrected area.

The Board acknowledged that there may be some properties in the immediate area that are assessed using a sales approach rather than an income approach, but that this reflects the City's policy to use the higher assessed value between either the sales or income approaches. This evidence does not demonstrate that the only approach used by the City for assessing properties similar to the subject is the sales approach. The Respondent and (during questions from the Board) the Complainant agreed that the appropriate approach for the subject (income producing) property is to use the income approach. The Board concurred, recognizing that the property is improved and is generating income, as demonstrated by the Assessment Request for Information provided in evidence.

The Board recognized that the Respondent is required to prepare an assessment based on market value using mass appraisal methodology (Section 2 in Matters Relating to Assessment and Taxation Regulation). This was apparently done in the calculation presented by the Respondent that resulted in an assessed value of \$7,570,000. However, the Board notes that no support data was provided by the Respondent to show how rental rates were derived, nor the comparable data used to support these rental rates. The Board also notes that the Complainant did its income approach using actual rental income from the subject and arrived at a value of \$6,540,000.

There is an obligation on the part of the municipality

“... to let the assessed person see or receive sufficient information to show how the assessor prepared the assessment of that person's property.”
(Section 299(1) of the Act).

The information provided by the Respondent in its presentation (verbal and documentary) was insufficient to allow the taxpayer to understand how the assessor prepared the assessment. The Board is mindful of Section 27.3(1) of the Matters Related to Assessment and Taxation Regulations which does not require the assessor to provide coefficients, as defined in the Regulations, and wishes to make clear that this conclusion does not pertain to the issue of disclosure of coefficients.

In Rebuttal, the Complainant provided its income approach using actual rental income from the subject and arrived at an assessed value of \$6,540,000. The Assessment Request for Information data supported the rental rates used in that calculation. Based on the lack of support data presented by the Respondent, the Board finds that the only evidence presented regarding rental rates for this type of property are those in the Assessment Request for Information document and used by the Complainant in its income approach calculation. For these reasons, the Board concludes that the original assessment is not correct and varies the assessed value to \$6,540,000.

Board's Decision:

The assessment is reduced to \$6,540,000.

DATED AT THE CITY OF CALGARY THIS 21 DAY OF July, 2011.



Ivan Weleschuk
Presiding Officer

APPENDIX "A"

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal

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.*