

**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:

***CIDEX DEVELOPMENTS LTD., COMPLAINANT
(Represented Altus Group Ltd.)***

and

The City Of Calgary, RESPONDENT

before:

***Board Chair P. COLGATE
Board Member D. JULIEN
Board Member T. USSELMAN***

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: 067233106
LOCATION ADDRESS: 1301 9 AVENUE SW
FILE NUMBER: 67910
ASSESSMENT: \$2,590,000.00

This complaint was heard on 8th day of August, 2012 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 3.

Appeared on behalf of the Complainant:

- Daryl Genereux, Altus Group Ltd. – Representing Cidex Development Ltd.
- Michael Cameron, Altus Group Ltd. – Representing Cidex Development Ltd.

Appeared on behalf of the Respondent:

- Erin Currie – Representing the City of Calgary

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

[1] The Board derives its authority to make this decision under Part 11 of the Municipal Government Act (the "Act"). The parties had no objections to the panel representing the Board as constituted to hear the matter.

[2] The Complainant raised a preliminary matter under Section 299 and 300 of the Municipal Government Act, in that the Respondent had failed to provide the requested information to the Complainant in compliance with the Act and had subsequently included the requested information in the Respondent's disclosure evidence. The Complainant requested that a portion of the Respondent's disclosure be refused by the Board in accordance with Section 9(4) of the Matters Relating to Assessment Complainants Regulation (MRAC) which directs the Board to "not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 and 300 of the Act but was not provided to the Complainant. The complainant submitted copies of the request for information forms submitted to the City of Calgary on January 5, 2012 and March 13, 2012.

[3] The Respondent advised the Board the requested information was provided to the Complainant on June 21, 2012, before the required date for the Complainant's disclosure so the information was available.

[4] The Board after reviewing the matter denied the request of the Complainant. The Board found the information requested was provided to the Complainant, admittedly months after the request was made, but before the deadline for disclosure under the regulation – MRAC. MRAC section 9(4) is specific that a Board may not hear evidence that was not disclosed, but it places no time limit on when the disclosure must be made. Matters Relating to Assessment and Taxation Regulation (MRAT) section 27.4 does set a deadline for compliance of fifteen (15) days but only with respect to a "summary of the assessments for the first 5 assessed properties requested by an assessed person in any given year". The Complainant did not provide the Board with any list of the properties requested, but took a generic approach of "all documents, records and other information".

[5] There being no additional preliminary matters the merits of the complaint were heard.

Property Description:

[6] The subject property under complaint is an improved parcel located in the Downtown West End area, with a Land Use Designation of DC. The parcel at 1301 9 Avenue SW has a land area of 20,373 square feet or 0.47 acres, with site influences for abutting a train track for an adjustment of -15%. The improvement is 1995, quality B, warehouse of 7,837 square feet. The parcel had been assessed at a base land rate of \$150.00 per square foot established by the Direct Comparison Approach.

[7] Assessment value was determined as follows:

$$20,373 \text{ sq.ft.} \times \$150.00/\text{sq.ft.} \times 85\% = \$2,597,557.50$$

Assessment value truncated to \$2,590,000.00

Complainant's Requested Value: \$660,000.00 (Revised during the hearing)

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

[8] In the interest of brevity, the Board restricted its comments to those items the Board found relevant to the matters at hand. Furthermore, the Board's findings and decision reflected on the evidence presented and examined by the parties before the Board at the time of the hearing.

[9] Both the Complainant and the Respondent submitted background material in the form of ground level photographs, site maps and City of Calgary Assessment Summary Reports.

[10] Both parties placed Assessment Review Board decisions before this Board in support of their positions. While the Board respects the decisions rendered by those tribunals, it is also mindful of the fact that those decisions were made in respect of issues and evidence that may be dissimilar to the evidence presented to this Board. The Board will therefore give limited weight to those decisions, unless issues and evidence were shown to be timely, relevant and materially identical to the subject complaint.

Issue: Is an Income Approach to valuation more reflective of market value than an assessment based upon a commercial land rate?

Complainant's Evidence:

[11] As a secondary issue, the Complainant requested the subject property be assessed based upon Income Approach for typical, C quality, office buildings. It was the Complainant's opinion the subject building was incorrectly designated an Automotive Services Warehouse as the current owners use the space for offices and only a small portion for warehouse use.

[12] Based upon the opinion of the Complainant an Income Approach calculation was prepared based upon C quality offices with a resulting assessment of \$660,000.00. (C1, Pg. 30)

[13] The recalculation was based upon the following variables and rates provided by the City of Calgary as typical:

Age	1995
Quality Class	C
Net Rental Rate	\$11.00
Vacancy Allowance	15.0%
Operating Costs	\$16.00
Non-recoverable Costs	2.00%
Capitalization Rate	8.00%
Assessed Area	7,837 square feet

[14] A table of five comparable properties was submitted by the Complainant to show the inequality in the assessments compared to the subject property. (C1, Pg. 33) The information is summarized:

Address	Property Name	Assessment	Building Age	Class	Building Area	Assessment Per Sq.Ft.
Subject						
1301 9 Ave SW		\$2,590,000	1995	C	7,837	\$330
Comparisons						
1035 7 Ave SW	Alta Link Place	\$9,530,000	1979	C	75,764	\$126
1000 8 Ave SW	1000 8 th	\$5,324,213	1981	C	41,406	\$129
1311 9 Ave SW	Sundog Place	\$5,440,000	1981	D	34,645	\$157
750 11 Street SW	Meewata Place	\$2,380,000	1981	C	19,216	\$124
840 7 Ave SW	Phoenix Place	\$28,974,250	1977	C	268,962	\$108
					Median	\$126
					Average	\$129
					High	\$157
					Low	\$108

[15] The Complainant provided "Property Assessment Summary Reports" on the five comparable properties located in the Downtown. (C1, Pg. 35-55)

[16] The Complainant presented an argument with respect to the incorrect application of a Highest and Best use approach to valuation of the subject property, stating it was an incorrect assumption as the "subject site is used to accommodate an existing building". (C1, Pg. 50) The Complainant repeatedly introduced the argument of the ability of an owner to pay taxes and the effect of taxes on value. (C1, Pg. 58-89)

Complainant's Rebuttal Evidence:

[17] The complainant submitted additional decisions for the Board to review – 2005 Court of Queen's Bench 512, Carb 0677/2012-P.

Respondent's Evidence:

[18] The Respondent presented a "Response to Highest and Best Use Argument" as presented by the Complainant. (R1, Pg. 4-10) The Respondent stated the City of Calgary is not legislated to apply one specific approach, a position that has been supported through previous Board decisions, such as ARB 0522/2010-P.

[19] The Respondent presented scenarios that supported the use of the Direct Sales approach or Land Value over the income approach. The sale at 1512 & 1514 14 Street SW for \$1,200,000.00 exceeded the market value of \$ 659,000.00 as determined by the Income Approach, whereas the Land Value assessment was \$1,144,500.00. It was the City of Calgary position that an income analysis does not always reflect the market value of the property.

[20] The Respondent stated the approach employed by the City of Calgary is a review of each property under both the Income Approach and a Land Only Approach based on commercial land values. The method that indicates the higher market value is then employed to assess the property.

[21] Into evidence, the Respondent submitted a map with the "2012 Vacant Land Rates" for the Downtown area. (R1, Pg.19) It was shown the subject property was located in the DT2W zone with a land rate of \$150.00 per square foot. An explanation page for the "2012 Downtown Land Assessed Base rate Adjustments and table were presented to support the -15% influence adjustment on the subject parcel. (R1, Pg. 21-22)

[22] The Respondent submitted four equity comparables in the Downtown DT2W that the City of Calgary had assessed for Land Only at a base rate of \$150.00 per square foot, with influence adjustments as required. (R1, Pg. 23) There were both Land Only and Land and Improvement properties in the group of comparables.

[23] The Respondent submitted a similar analysis of all the comparable properties in the Downtown submitted by the Complainant, but based the comparison on the assessment per square foot of land area. (R1, Pg.24) The Respondent noted the properties assessed based upon an Income Approach had larger buildings than the subject property. The column identified as Mailed Assessment is the value sent out to the owners in January 2012. The Land Value column was calculated by the land area multiplied by the base land rate and the influence adjustment applied.

Submarket Zone	Address	Property Type	Assessable Land Area (Sq. Ft.)	Mailed Assessment	Land Value	Total Influence Adjustment	Assessment Per Square Foot of Land area	Approach to Value
DT2	1301 9 Ave SW	LI	20,373	\$2,590,000	2,590,000	0.85	\$127	Sales(Land)
DT2	1035 7 Ave SW	LI	24,583	\$9,538,113	3,134,333	0.85	\$388	Income
DT2	1000 8 Ave SW	LI	13,009	\$5,324,213	2,244,053	1.15	\$409	Income

DT2	1311 9 Ave SW	LI	25,257	\$5,449,668	3,220,268	0.85	\$216	Income
DT2	750 11 St SW	LI	6,067	\$2,380,700	911,400	1.00	\$392	Income
DT2	840 7 Ave SW	LI	18,349	\$28,974,250	3,509,446	0.85	\$1,579	Income

[24] The Respondent submitted numerous comparables which support the City of Calgary Methodology for valuing properties using a land rate to generate a market value – CAB 2548/2011-P, CARB 2521/2011-P, CARB 0801/2011-P to reference a few.

Findings of the Board:

[25] The Board found the question regarding the property use designation would be properly addressed with a meeting between the assessor and the owner's agent. With the lack of information, the Board is unable to make a change to the designated property use.

[26] The Board found the Complainant's table of comparisons was limited in the information provided. While the subject property was assessed based upon its parcel size the Complainant failed to provide this information for the comparables to enable a better comparison by the Board. The Board noted the Complainant provided no supporting documentation to show how the assessments had been determined for the comparables. The Complainant's analysis indicates the subject property is assessed higher than the comparables submitted.

[27] The Board found the Complainant's comparables, while being classified as C and D quality, were significantly larger structures than the subject property. The Board finds the lack of similarity between the subject, a single storey structure, and many multi-storey structures with underground parkades did not convince the Board to support an adjustment to the assessment.

[28] The Board found the Complainant's argument on the supply and demand in the market place was based upon assumptions lacking market evidence. It may be argued a population of properties may take time to be absorbed by the market, but to attempt to apply that conclusion to an individual property is a flaw in the statistical application. Each property in a population has an equal chance of being the next property purchased when all factors are equal. The Complainant has failed to convince the Board this property would not sell in the near future.

[29] The Respondent, taking an example from the Complainant, analysed the Complainant's comparables based on land area to derive a different conclusion, one indicating the subject is assessed lower than the comparables. The Board found neither approach provided that substantial evidence on which to make a decision, but rather a clear showing that statistics can be presented to support either assumption depending upon the variables used in the calculations.

[30] The Board found neither party presented evidence to confirm or dispute the base rate of \$150.00 per square foot.

[31] The Board makes clear at this time that any presentation with respect to taxes and the ability to pay taxes has no place before the Assessment Review Board. The legislated mandate of the Board is to rule on the question of assessment and if the assessment is fair and equitable. The Board places no weight on any argument with respect to taxation or the ability of an owner to pay.

[32] Both parties have submitted numerous decisions in support of their respective positions.

The Board on reviewing these decisions must be cognizant of its duty to determine a fair and equitable assessment as set out in the Act:

467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality,

and

1(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it sold on the open market by a willing seller to a willing buyer.

[33] While the Complainant has presented an extensive submission, it failed to provide sufficient evidence to warrant a change to the assessment.

Board's Decision:

[34] For the reasons given, the Board confirms the assessment at \$2,590,000.00

DATED AT THE CITY OF CALGARY THIS 14th DAY OF September 2012.



PHILIP COLGATE
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. C2	Complainant Rebuttal
2. R2	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.*

LEGISLATIVE REQUIREMENTS

MUNICIPAL GOVERNMENT ACT

Chapter M-26

1(1)(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer;

Division 1

Preparation of Assessments

Preparing annual assessments

285 Each municipality must prepare annually an assessment for each property in the municipality, except linear property and the property listed in section 298. RSA 2000 cM-26 s285;2002 c19 s2

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,

ALBERTA REGULATION 220/2004

Municipal Government Act

MATTERS RELATING TO ASSESSMENT AND TAXATION REGULATION

1(f) "assessment year" means the year prior to the taxation year;

1(n) "market value" means the amount that a property, as defined in section 284(1)(r), might be expected to realize if it sold on the open market by a willing seller to a willing buyer;

Part 1

Standards of Assessment

Mass appraisal

2 An assessment of property based on market value

- (a) must be prepared using mass appraisal,
- (b) must be an estimate of the value of the fee simple estate in the property, and
- (c) must reflect typical market conditions for properties similar to that property.

Valuation date

3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.

Division 2 Decisions of Assessment Review Boards

Decisions of assessment review board

467(3) An assessment review board must not alter any assessment that is fair and equitable, taking into consideration

- (a) the valuation and other standards set out in the regulations,
- (b) the procedures set out in the regulations, and
- (c) the assessments of similar property or businesses in the same municipality.

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Types	Vacant Land	Cost/Sales Approach	- Land Value - Income Approach - Equity Comparables