

**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:

**1323535 ALBERTA LTD., COMPLAINANT
(Represented by 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: 068127901

LOCATION ADDRESS: 1117 MACLEOD TRAIL SE

FILE NUMBER: 67993

ASSESSMENT: \$4,210,000.00

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 1323535 Alberta Ltd.
- Michael Cameron, Altus Group Ltd. – Representing 1323535 Alberta 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] There being no preliminary matters the merits of the complaint were heard.

Property Description:

[3] The subject property under complaint is an improved parcel located in the Beltline area of The City of Calgary, with a Land Use Designation of DC. The parcel at 1117 Macleod Trail SE has a land area of 25,898 square feet or 0.59 acres, with site influences for being a corner lot (+5%). The improvement, constructed circa 1958, is a quality C, lowrise office of 9,369 square feet. The parcel has been assessed at a base land rate of \$155.00 per square foot established by the Direct Comparison Approach.

[4] Assessment value was determined as follows:

25,898 sq.ft. X \$155.00/sq.ft. X 105% = \$4,214,899.50

Assessment value truncated to \$4,210,000.00

Complainant's Requested Value: \$1,250,000.00

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

[5] 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.

[6] 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.

[7] 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.

Issues:

[8] The Complainant has identified two issues for consideration by the Board – the application of an income approach to the valuation of the subject property and the use of an equitable capitalization rate of 8.25% in the income calculation.

Issue 1: Is an Income Approach to valuation more reflective of market value than an assessment based upon a commercial land rate?

Complainant's Evidence:

[9] The Complainant submitted the "subject suffers a large inequality in assessment per square foot" (C1, Pg. 24).

[10] 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. 24) The information is summarized:

Address	Property Name	Assessment	Building Age	Class	Building Area	Assessment Per Sq.Ft.
Subject						
1117 Macleod Tr. SE		\$4,210,000	1958	C	9,369	\$449
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 St 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

[11] The Complainant provided "Property Assessment Summary Reports" on six additional properties, both office and retail, within the Beltline community of better quality and larger building areas. (C1, Pg. 25-34)

Address	Assessment	Building Age	Class	Building Area	Assessment Per Sq.Ft.
1300 8 St SW	\$5,765,948	1967	B	32,051	\$180
701 11 Av SW	\$4,310,000	1999	B	26,586	\$162
1501 1 St SW	\$4,830,000	1979	B	27,143	\$178
1221 8 St SW	\$85,363,926	2010	AA	217,512	\$392
1011 1 St SW	\$8,680,000	1978	B	53,199	\$163

[12] The Complainant submitted a second table of four comparable C quality structures located in the Beltline community. (C1, Pg. 35) Copies of the "Property Assessment Detail Report" were submitted for each of the comparables in the table, plus one not listed – 1109 Macleod Trail SE. Supporting documents were provided in the submission. (C1, Pg.36-49)

Address	Property	Building Age	Class	Use
344 12 Ave SW	Lacey Court	1956	C	Office
227 12 Av SE	Vietnamese Restaurant	1971	C	Restaurant
1029 17 Ave SW	TD Bank	1973	C	Bank
1013 17 Ave SW	Shelbourne Building	1978	C	Retail
Subject				
1117 Macleod Tr SE		1958	C	Office

[13] 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. 50-86)

[14] The Complainant submitted evidence as to the marketability of the subject site when taking into consideration the current vacant land in the Beltline. (C1, Pg. 87-93) The Complainant put forward the position there is a "very low probability of the subject site ever selling in the near future".

Respondent's Evidence:

[15] The Respondent presented a "Response to Highest and Best Use Argument" as presented by the Complainant. (R1, Pg. 5-11) 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.

[16] 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.

[17] The Respondent stated the approach employed by the City of Calgary is to review 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.

[18] The Respondent submitted numerous decisions in support of the methodology of applying a commercial land rate when an income approach threshold has been exceeded – ARB0105/2007-P, CARB 2536/2011-P, CARB 1621-2011-P to reference a few.

[19] A copy of an Alberta Data Search document for the June 21, 2007 sale of the subject property was entered into evidence. (R1, Pg., 14) The sale was identified as a vacant land sale,

although the property was improved at the time. The property sold on that date for \$7,535,000.00.

[20] The Respondent submitted eight equity comparables in the Beltline that the City of Calgary had assessed for Land Only at a base rate of \$155.00 per square foot, with influence adjustments as required. (R1, Pg. 22) There were both Land Only and Land and Improvement properties in the group of comparables.

[21] The Respondent submitted a different analysis of the Complainant's five comparables based upon an assessment rate per square foot of Land area. (R1, Pg. 23) The Respondent noted the Complainant's comparables were all located in a superior location in the Downtown area.

SubMarket Zone	Address	Property Type	Assessable Land Area (Sq. Ft.)	Mailed Assessment	Assessment Per Square Foot of Land area	Approach to Value
BL2	1117 Macleod Tr SE	LI	25,898	\$4,210,000	\$163	Sales(Land)
DT2	1035 7 Ave SW	LI	24,583	\$9,538,113	\$388	Income
DT2	1000 8 Ave SW	LI	13,009	\$5,324,213	\$409	Income
DT2	1311 9 Ave SW	LI	25,257	\$5,449,668	\$216	Income
DT2	750 11 St SW	LI	6,067	\$2,380,700	\$392	Income
DT2	840 7 Ave SW	LI	18,349	\$28,974,250	\$1,579	Income

[22] The Respondent submitted a similar analysis of all the properties in the Beltline submitted by the Complainant, but based the comparison on the assessment per square foot of land area. (R1, Pg.25) The Respondent noted three of the properties submitted by the Complainant were assessed on the Direct Sales or Land Value approach, not an income approach. 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 that was 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
BL2	1117 Macleod Tr SE	LI	25,898	\$4,210,000	\$4,210,000	1.05	\$163	Sales(Land)
BL3	344 12 Ave SW	LI	10,500	\$1,627,500	\$1,627,500	1.00	\$155	Sales(Land)
BL2	227 12 Ave SE	LI	13,288	\$2,050,000	\$2,050,000	1.00	\$155	Sales(Land)

BL2	1109 Macleod Tr SE	LI	6,998	\$1,138,925	\$1,138,925	1.05	\$163	Sales(Land)
BL6	1029 17 Ave SW	LI	10,916	\$2,650,000	\$1,776,579	1.05	\$243	Income
BL3	701 11 Ave SW	LI	13,546	\$4,310,000	\$2,204,612	1.05	\$318	Income
BL4	1300 8 St SW	LI	16,215	\$5,765,948	\$2,638,991	1.05	\$356	Income
BL6	1013 17 Ave SW	LI	10,916	\$4,410,000	\$1,691,980	1.00	\$404	Income
BL2	1501 1 St SW	LI	11,141	\$4,838,116	\$1,813,198	1.05	\$434	Income
BL2	1011 1 St SW	LI	11,455	\$8,680,000	\$1,864,301	1.05	\$758	Income
BL4	1221 8 St SW	LI	49,400	\$85,420,000	\$8,039,850	1.05	\$1,729	Income

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

Complainant's Rebuttal Evidence:

[24] The Complainant submitted a recent decision, CARB 0677/2012-P, which dealt with a property assessed based on commercial vacant land. Based upon the evidence submitted in the hearing the Board ruled the income approach was more reflective of the market value based upon the current use of the site.

Issue 2: Should the Capitalization rate be 8.25% in the Income Approach to the valuation of the subject property?

Complainant's Evidence:

[25] The Complainant requested an increase in the capitalization rate from 7.75% to 8.25% based upon a hierarchical comparison of the capitalization rates. (C1, Pg. 110) A table showing the percentage change between classes in the Downtown and the Beltline was submitted in support of the change.

	Downtown	Beltline	Percentage Change Between Classes	Request
Class AA	6.25%	6.75%		
Class A	6.75%	7.25%	0.50%	
Class B	7.50%	7.75%	0.50%	
Class C	8.00%	7.75%	0.50% in the Downtown Only	8.25%

[26] The Complainant requested an additional 0.50% increase to the capitalization rate in line with the changes between classes in the Downtown and the Beltline.

[27] Based upon the requested change the Complainant submitted an alternative assessment request of \$1,076,000.00, rounded to \$1,070,000.00 (C1, Pg. 115)

Respondent's Evidence:

[28] The Respondent submitted no evidence as to the capitalization rate but noted in verbal testimony the Complainant had provided no market evidence to show an increase to the capitalization rate was warranted. The Respondent stated the Complainant's request was based upon the assumption that the hierarchy of rates in the downtown should therefore be applied to the Beltline, even though they are different market areas analysed separately.

Findings of the Board:

[29] 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.

[30] The Board further noted the comparison properties were all located in the Downtown area, as opposed to the subject located in the Beltline, which is a different market zone treated independently when analysed.

[31] The additional comparables submitted by the Complainant were for better quality structures within the Beltline, being classified as B and AA quality, while the subject is classified as a C quality.

[32] Upon review of the properties submitted by the Complainant to illustrate the character of typical C buildings, the Board noted that three of the Properties – 344 12 Avenue SW, 227 12 Avenue SE and 1109 Macleod Trail SE were valued on a commercial land basis, not an income approach as requested by the Complainant. The Board took special note of the property at 1109 Macleod Trail, as it is immediately adjacent to the subject property.

[33] 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.

[34] The Complainant's request for an increase in the capitalization rate is not supported by market evidence, but rather is based upon a perceived hierarchy that should be extended to the C quality building in the Beltline. Based upon the lack of market evidence, the request for a capitalization rate of 8.25% was denied.

[35] 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 that neither approach provided substantial evidence upon which to make a decision, but rather showed that statistics can be presented to support either assumption depending upon the variables used in the calculations.

[36] The Board found neither party presented evidence to confirm or dispute the base rate of

\$155.00 per square foot.

[37] 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 whether or not 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.

[38] 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.

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

Board's Decision:

[40] For the reasons given, the Board confirms the assessment at \$4,210,000.00

DATED AT THE CITY OF CALGARY THIS 25 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. R1	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