

**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:

***1576571 ALBERTA LTD., COMPLAINANT
(Represented by Altus Group Limited)***

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:	068140201	068140300	068140508	068140706
LOCATION ADDRESS:	126 13 AVE SE	120 13 AVE SE	114 13 AVE SE	104 13 AVE SE
FILE NUMBER:	67997	67999	68001	68003
ASSESSMENT:	\$1,080,000.00	\$2,930,000.00	\$868,000.00	\$1,700,000.00

The complaints were heard on 7 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:

- Michael Cameron, Altus Group Ltd. – Representing 1576571 Alberta Ltd.
- Danielle Chabot – Representing 1576571 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] A joint request was made by the Complainant and the Respondent for the hearings on roll numbers 068140201 (File # 67997), 068140300 (File # 67999), 068140508 (File # 68001) and 068140706 (File # 68003) to be heard as one. The parties indicated that the evidence was identical for each roll number, with the exception of the legal identifiers, the physical size of the individual lots and the requested revised assessment.

[3] The Board ruled that in the interest of efficiency, and recognizing the evidence to be presented for the four hearings was identical, the hearings would be heard together. The Board would base its decision for the four complaints based upon the evidence presented.

[4] The Respondent requested portions of its presentation be removed by the Board as it would not be presented. The Complainant had no objection.

[5] The Board accepted the request and removed the following pages from the Respondent's evidence package identified as R1 – pages 19 to 27 and a portion of page 4 and all of page 5.

[6] In light of the Respondent's request to remove portions from its package, the Complainant requested portions of its presentation with respect to Issues 2, 3, and 4 also be. The Respondent had no objection to the request.

[7] The Board accepted the request and removed the following pages from the Complainant's evidence package identified as C1 – pages 56 to 63 (Issue 2), pages 70 to 78 (Issue 3) and pages 79 to 80 (Issue 4).

[8] There being no other preliminary matters the merits of the complaints were heard.

Property Description:

[9] The four properties under complaint are located in the Beltline area of The City of Calgary, with a Land Use Designation of CC-X. The parcel at 104 13 Avenue SE has a parcel size of 10,505 square feet, with a site influence for being a corner lot. The parcel at 114 13 Avenue SE has a total parcel size of 16,106 square feet, but only 5,602 square feet are under complainant. The parcel at 120 13 Avenue SE has a parcel size of 18,905 square feet. The

parcel at 126 13 Avenue SE has a parcel size of 7,001 square feet. The parcels have been assessed at a rate of \$155.00 per square foot based upon a Direct Sales Comparison Approach.

[10] The Board noted at this time the parcel at 114 13 Avenue SE had under complaint an area of 5602 square feet. The balance of 16,000 square feet has been assessed under a separate roll number as exempt from taxation. The Respondent stated the exemption has been cancelled and the entire area should now be taxable.

[11] The Board, while recognizing the cancellation of the exemption component of the parcel, could not confirm or alter the assessment as a result of the cancellation. The Board had before it an assessment based upon an area of 5,602 square feet and accordingly based its decision on the lower square footage. The Board noted the City of Calgary could issue an amended notice for the change to the parcel after the completion of the hearing when the restriction from Municipal Government Act 305(5) is no longer in affect.

Complainant's Requested Value: \$4,320,000.00

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

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

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

[14] Both parties also 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:

[15] Should the assessments of the subject properties reflect the actual purchase price per square foot for the subject parcels, as a better indicator of market value, rather than the typical rate as applied by the City of Calgary?

Complainant's Evidence

[16] The Complainant submitted into evidence the RealNet document which showed the subject parcels had sold for a price of \$5,400,000.00 or approximately \$103.03 per square foot (based upon the areas provided) on November 4, 2011. (C1, Pg.34-35)

[17] The Complainant provided the supporting documentations, Government of Alberta Land Title certificate and the Government of Alberta Transfer of Land document, to support the sale price. (C1, Pg. 36-42)

[18] The Complainant submitted a copy of the Alberta Data Search report for the same sale on November 4, 2011. (C1, Pg. 33) the Alberta Data search report shows the area of the four parcels at 52,500 square feet, giving a sale price of \$102.83 per square foot.

Respondent's Evidence

[19] The Respondent stated the assessment was based upon a non-residential land rate of \$155.00 per square foot, a rate applicable for most of the Beltline area. (R1, Pg. 15)

[20] The Respondent submitted a "2012 Beltline Land Influence Chart" to show the percentage adjustments which could be applied to parcels. (R1, Pg.16) Specifically, a corner lot influence of +5% had been applied to the parcel at 104 13 Avenue SE, the only lot to receive an influence adjustment.

[21] The Respondent presented a "Beltline Comparables" chart for the subject properties and six equity comparables. (R1, Pg. 17) The equity comparables, both Land Only and Land and Improvement parcels, had been assessed with the base land rate of \$155.00 per square foot plus applicable influence adjustments.

[22] The Respondent submitted an August 02, 2011 sale at 218 10 Avenue SE in support of the land rate of \$155.00 per square foot. The sale for the 1.06 acre or 46,370 square feet parcel was for \$7,850,000.00 or a land rate of \$169.00 per square foot. It was the Respondents contention that recognition of the corner lot influence and the location abutting the train tracks would result in an adjusted land rate of \$186.00 per square foot.

Findings of the Board

[23] The subject parcels are adjacent parcels in the Beltline area. The parcels are assessed as Land Only properties.

[24] The Complainant's submission of a post facto sale of the subject parcels on November 4, 2011 indicated a sale price per square foot of land of \$103.03.

[25] The Respondent submitted the subject parcels are assessed at a land rate of \$155.00 per square foot. The Respondent submitted equity comparables to show consistent application of the land rate.

[26] The Respondent submitted a post facto sale of a comparable parcel on August 02, 2011 at 218 10 Avenue SE which indicated a sale price per square foot of land at \$169.00 or \$186.00 with adjustments.

[27] The Respondent submitted no market evidence to validate the land rate of \$155.00 per square foot.

[28] The Board in its deliberation found, while the land rate was applied equitably, the Respondent failed to show the source of the land rate through market evidence. The introduction of a post facto sale to justify the applied rate was not in keeping with the declared cut off date of July 1, 2011 for sales used in the determination of the assessment. The sale did indicate that land values within the Beltline do vary, when taken into consideration with the sale of the subject parcels. The Board is presented with two possible land rates \$103.00 or \$169.00 per square foot.

[29] The Board found the lack of market evidence for the applied land rate and the two dissimilar post facto sale land rates does not provide clear evidence in support of the request.

[29] The Board found the lack of market evidence for the applied land rate and the two dissimilar post facto sale land rates does not provide clear evidence in support of the request. The Board therefore uses the old and frequently employed saying, "The best indicator of market value is the sale of the subject property." The Respondent did not show the sale of the subject properties were not valid sales, exposed to the market place, and between a willing vendor and a willing purchaser.

[30] The Board reviewed the Decisions submitted by both parties and found support for the use of the actual sale price in the determination of the assessment.

[31] ARB 0789/2010-P decision reads, "The CARB finds the best indicator of value to be the sale of a subject property reasonably close to the valuation date. While the sale is post-facto, it is still within the valuation year. The Board is able to accord substantial weight to such a sale, and does so."

[32] Further guidance is found from Re Regional Assessment Commissioners, Region No.11 v. Nesse Holdings Ltd. et al. (1984) which stated, "I think generally speaking the recent sale price, if available as it was in this case, is in law and, in common sense, the most realistic and most reliable method of establishing market value." This quote was taken from the Decision of Madam Justice L.D. Acton of the Court of Queen's Bench of Alberta in 697604 Alberta Ltd. v. The City of Calgary and The Municipal Government Board.

Board's Decision:

[33] The Board alters the assessments as follows:

Roll Number 068140201 reduced from \$1,080,000.00 to \$721,000.00

Roll Number 068140300 reduced from \$2,930,000.00 to \$1,940,000.00

Roll Number 068140508 reduced from \$868,000.00 to \$577,000.00

Roll Number 068140706 reduced from \$1,700,000.00 to \$1,130,000.00

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. 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.*

FOR ADMINISTRATIVE USE

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