

**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:

***1533794 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: 090077504

LOCATION ADDRESS: 4108 MACLEOD TRAIL SE

FILE NUMBER: 68523

ASSESSMENT: \$1,140,000.00

This complaint was heard on 7th 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 1533794 Alberta Ltd.
- Graham Kerslake, Altus Group Ltd. – Representing 1533794 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 Board preceded to the merits of the complaint.

Property Description:

[3] The subject property is an improved parcel in the Manchester Industrial Area at 4108 Macleod Trail SE. The parcel, encompassing an area of 0.26 acres or 11,485 square feet, is zoned with a land use designation of C-COR3. The property, assessed at a commercial land rate of \$100.00 per square foot, is assessed at \$1,140,000.00.

Complainant's Requested Value: \$689,000.00

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

[4] 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.

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

[6] 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.

Issues:

[7] The Board found in its deliberation two issues had been clearly identified for its consideration.

Issue 1: Should an Income Approach be applied to the subject property in the determination of its market value?**Complainant's Evidence:**

[8] The Complainant submitted an alternate request for an assessment of \$700,000.00 based upon an income approach.

[9] Support for the request was an "Income Approach – Valuation" page which provided the rates applied to the property to determine the value. (C1, Pg. 54) No supporting documents to show the source of the rates or evidence to show the rates were typical for the City of Calgary were provided.

Respondent's Evidence:

[10] The Respondent submitted no direct evidence to the issue of an application of the Income Approach. In response the Respondent submitted numerous CARB decisions which showed support for the methodology of assessing improved parcels as if vacant – CARB 2548/2011-P, CARB, 2521/2011-P and CARB 2594/2011-P to reference a few.

Findings of the Board:

[11] The Board found there was insufficient evidence to support the Complainant's Income Approach argument. No evidence was presented to support the claim the rates applied were reflective of the rates the City of Calgary established as typical.

[12] Accordingly, the Board places no weight on the request and denies the Complainant's revised assessment.

Issue 2: Is a land rate of \$60.00 more reflective of market value on Macleod Trail than the assessed land rate of \$100.00?**Complainant's Evidence:**

[13] Based upon a land rate of \$60.00 per square foot the Complainant requested a revised assessment of \$689,000.00.

[14] In support of its position, the Complainant submitted an analysis of four improved parcel sales along Macleod Trail. (C1, Pg. 42) The Complainant analysed each of the sales by removing the improvement value from the sale price to determine the 'underlying land value in order to derive a rate per square foot. The improvement value was determined using Marshall and Swift costing method. Supporting documentation and the Marshall and Swift calculations were presented into evidence. (C1, Pg.24-1) The Complainant's analysis of the sales indicated a mean land rate of \$62.93 per square foot and a median land rate of \$59.39 per square

foot.(C1, Pg. 42)

The Board's summary of the analysis follows:

Address	Sale Date	Area (sq. ft.)	Total Purchase Price (\$)	Sale Price Per Square Foot	Marshall & Swift Improvement Value (\$)	Underlying Land Value (\$)	Land Value Per Square Foot
5720 Macleod Trail SW	18-Nov-09	31,363	3,500,000	111.60	1,612,750	1,887,250	60.17
7212 Macleod Trail SE	13-Nov-09	44,867	2,900,000	64.64	481,879	2,418,121	53.90
7425 Macleod Trail SW	15-Feb-10	23,980	2,900,000	120.93	1,004,805	1,895,195	79.03
9110 Macleod Trail SW	05-Jul-10	165,528	15,000,000	90.62	5,299,000	9,701,000	58.61
			Mean	96.95		Mean	62.93
			Median	101.11		Median	59.39

Respondent's Evidence:

[15] The Respondent stated it was the position of The City of Calgary that the correct land rate was \$100.00 per square foot for the subject property. The Subject property is improved but the value determined by an Income Approach would be less than the market value if the site were vacant.

[16] The Respondent stated there were no vacant land sales on Macleod Trail during the analysis period. The applied rate was derived from two sales that occurred on 16th Avenue NE in 2010 and 2011. The Respondent stated its belief that the market areas of 16th Avenue North and Macleod Trail were sufficiently similar in development, traffic and commercial mix to allow the rates from 16 Avenue North to be applied to the Macleod Trail corridor. Both corridors have zonings of C-COR, Commercial Corridor.

[17] The Respondent submitted the information for the two sales into evidence (R1, Pg.10), which the Board summarized as follows:

Address	Sale Date	Sale Price	Parcel Size (sq. ft.)	Zoning	Months before Valuation Date	Time Adjustment	Time Adjusted Sale Price	Time Adjusted Sale Price Per Square Foot	Influences	Adjusted Sales Price Per Square Foot
505 16 Ave NE	05-Feb-2010	\$2,060,000	16,988	C-COR1	17	0.9375	\$1,931,250	\$113.68	Corner Lot	\$108.27
210 16 Ave NE	31-May-2011	\$625,000	6,241	C-COR1	1	1.00	\$625,000	\$100.14		\$100.14

[18] The Respondent submitted the RealNet documents in support of the two sales showing

one parcel was vacant – 505 16 Avenue NE – while the second site – 210 16 Avenue NE - was improved with a small restaurant. (R1, Pg. 11-16) The Respondent submitted a 'Non-Residential Property Sale Questionnaire' for 210 16 Avenue NE which has the purchaser indicating the intent to demolish the building within the month when the lease expired. (R1, Pg.17-21)

[19] Based upon the two sales the City of Calgary established a commercial land rate as follows:

2012 COMMERCIAL LAND VALUES	
MT2, MT3, MT4, MT5, SX1, CE2	0 - 20,000 SQUARE FEET @ \$100.00 PER SQUARE FOOT
	20,001 - 135,000 SQUARE FEET @\$60.00 PER SQUARE FOOT
	Greater than 135,000 square feet @ \$28.00 PER SQUARE FOOT

(R1, Pg. 10)

[20] The Respondent submitted additional information with respect to the Complainant's four sales. For the sale at 5720 Macleod Trail SW, the Respondent noted the Marshall and Swift calculation for building equated to 46% of the market value. (R1, Pg. 25-29) The sale at 7212 Macleod Trail SE was a former McDonald's site that was extensively renovated after the purchase. (R1, Pg. 30-37) For the sale at 7425 Macleod Trail SW, the Respondent noted the Marshall and Swift calculation for building equated to 35% of the market value. (R1, Pg. 36-42) For the sale at 9110 Macleod Trail SE, the Respondent noted the Marshall and Swift calculation for building also equated to 35% of the market value. (R1, Pg. 43-46) The Respondent also pointed out that in the Marshall and Swift calculation by the Complainant there was a lack of consistency between the actual age of the structures and the effective age used by the Complainant in the calculations. The Respondent in support of its argument submitted an explanation page on "How Effective Age Works". (R1, Pg. 107)

Complainant's Rebuttal Evidence:

[21] The Complainant submitted a rebuttal to the sale at 505 16 Avenue NE, when it submitted evidence the sale was not exposed on the market at the time of sale. The Complainant submitted a copy of an email between Yu-Ching Liu of First Calgary financial to Kam Fong and Reid Hutchinson on Altus Group Ltd. In which Yu-Ching Liu stated, "Judging from the paperwork we received from the lawyer, it's likely we purchased the land directly from the vendor. There is no realty company or MLS number mentioned in any of the legal documents we have." (C2, Pg. 14) The Complainant introduced MGB 046/10, which addressed the use of sales that were not exposed in the market place. Within the decision, a portion was highlighted by the Complainant from MGB decision DL 132/08 that stated, "for a sale to represent market value, it is imperative that the sale be tested through competition in the 'open market'". (C2, Pg. 15-27) It was the opinion of the Complainant the sale for 505 16 Avenue NE was not exposed on the open market and so it should be excluded from the analysis of the City of Calgary.

[22] The Complainant submitted for the Board's consideration a number of additional

decisions which address its concern with respect to applying a income approach in place of a vacant land rate to assesses the subject property – CARB 1853/2011-P, CARB 1927/2011-P, CARB 2034/2011-P, CARB 2062/2011-P (C2, Pg. 53-83). Also submitted were 2012 CARB decisions that were directly applicable to the issue of the land rate applied to properties along Macleod Trail – CARB 0853/2012-P, CARB 0874/2012-P, CARB 0830/2012-P, CARB 0852/2012-P.

Findings of the Board:

[23] The Board in reaching its decision first examined the question of land value as set by the City of Calgary. The presentation by the Respondent raised concern for the Board when a policy for valuation based upon possible market land value is predicated upon a population of only two sales. The Board was not swayed by the Respondent's two sales of C-COR1 land to be compelling evidence of land values in the Macleod Trail corridor, C-COR3. There was no compelling market evidence submitted by the Respondent to show the comparability of the C-COR1 locations on 16th Avenue were comparable to the subject property on Macleod Trail.

[24] The land rate was established based primarily of two sales in a different market area on properties very similar to the subject for they were lots of 16,988 square feet and 6,241 square feet as compared to the subject at 11,485 square feet. However, evidence was place before the Board which indicated the sale at 505 16 Avenue NE may not be a valid sale. If the Board accepted the assumption the sale is invalid, then the City of Calgary is now basing its entire Macleod Trail land rate on only one sale. This Board was not persuaded by the Respondent's arguments that on the basis of only one or two sales in a different quadrant and without market evidence to support comparisons a valid assessment can be determined

[25] The Board in its deliberation takes guidance from the noted CARB decisions that dealt specifically with the land value in the Macleod Trail corridors. Accordingly, the Board finds the lack of substantial evidence for the current land rate and reduces the rate to \$60.00 per square foot.

Board's Decision:

[26] For the reasons given, the Board made the decision the land rate would be reduced to \$60.00 per square foot. The Board calculated the assessment as followed:

11,485 square feet @ \$60.00 per square foot = \$689,100.00

[27] The assessment was reduced from \$1,140,000.00 to \$689,000.00.

DATED AT THE CITY OF CALGARY THIS 28th 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.*

FOR ADMINISTRATIVE USE

Subject	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Other Property Type	Vacant Land	Cost /Sales Approach v. Income Approach	-Land Value Income