

**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:

***HOMBURG L.P. MANAGEMENT INCORPORATED, 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: 201276623

LOCATION ADDRESS: 1316 11 AVENUE SW

FILE NUMBER: 67734

ASSESSMENT: \$4,760,000.00

This complaint was 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:

- Graham Kerslake, Altus Group Ltd. – Representing Homburg L.P. Management Inc.

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 Respondent, with respect to the content of the Complainant's rebuttal document, raised a jurisdictional matter. (C2) The Respondent held the position the Complainant was introducing new evidence about a property at 1235 11 Avenue SW, which should have been disclosed in the initial disclosure document. The Complainant stated the information was to show the City of Calgary was applying a residential assessment class to a lot comparable to the subject property.

[3] The Board, having examined the document in recess, ruled a portion of the rebuttal document was new evidence and would not be allowed into evidence. Pages 7 through 10, inclusive, were removed from submission. The Board rejected the comparable as it was determined a building was under construction on the site at 1235 11 Avenue SW. The construction was under the authority of a building permit and was correctly classified as residential. The issue with the subject property dealt with a vacant lot, a development permit, and the proper assessment classification.

Property Description:

[4] The subject property is a vacant parcel in the Beltline community at 1316 11 Avenue SW. The parcel, encompassing an area of 0.67 acres, is zoned with a land use designation of CC-X. The property, assessed at a vacant commercial land rate of \$155.00 per square foot plus a +5% adjustment for a corner lot influence, is assessed at \$4,760,000.00.

Complainant's Requested Value: \$4,760,000.00, with a Property Assessment Classification of 97.07% Residential and 2.93% Non-Residential, equivalent to \$4,620,000.00 Residential and \$140,000.00 Non-Residential.

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

[5] 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.

[6] 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.

[7] 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:

Should the Assessment class for the subject property be changed from 100% non-residential to a split class of 97.07% residential and 2.93% non-residential?

Complainant's Evidence:

[8] The Complainant submitted into evidence the Correcting Notice of Decision from the Municipal Government Board dated February 12, 2010, which adjusted the assessment of the subject property to reflect a 97.07% residential and 2.93% non-residential split to the assessed value. (C1, Pg. 18) Also submitted were the 2010 and 2011 Property Assessment Notices, which show the application of a split residential – non-residential assessment class. (C1, Pg. 19-20)

[9] The Complainant emphasized to the Board that the intent for the site was to develop the property as an apartment building of 214 units, with a portion developed as a restaurant, cafés and retail stores. Support for this was shown by the development permit #2007-2006 approved 2007/12/13. (C1, Pg. 21)

[10] Further support was provided through third party reports from the Calgary Real Estate Review dated August 17, 2011 (C1, Pg. 22-24) which references the “condominiums currently in planning, pre-construction phase or that have just broken ground”. The subject property was identified as the Cristal Tower. A second article, dating from 2011 and downloaded from the UrbanDB website, also identified the proposed development of the Cristal Tower complex. (C1, Pg. 25-26) A third article, dating from mid-2012 and downloaded from the buzzbuzzhome.com website also identifies a Cristal Tower development at the subject site. (C1, Pg. 27-28)

[11] The Complainant submitted the argument that the intent to construct residential units on the site was sufficient to justify the application of a split classification on the subject property. Quoting the Municipal Government Act, Section 497(b) the Complainant read “non-residential ... does not include farm land or land that is used or intended to be used for permanent living accommodations”. (C1, Pg. 33) Support for the Complainant's argument was presented in the MGB 088/06 decision on the Riverpointe Properties. (C1, Pg. 36-53) It was the Complainant's interpretation of the decision that the presence of intent was sufficient reason for the change to the assessment class of a property. The quoted decision was based upon the evidence showing a clear intent on December 31, 2004 for the residential development of the site.

[12] The allowed Complainant's rebuttal contained additional photographs of the subject

property and CARB 0677/2012-P decision on the application of an income approach to valuation of the property as opposed to a vacant land rate application to determine the assessment. The Complainant highlighted paragraph 14 of the Board's decision, which stated in part, "looking into the future is conjectural at best. The evidence of the Respondent failed to persuade the Board that alternative uses for the subject property would be manifest in the near future, or even in the foreseeable future." (C2, Pg. 13)

Respondent's Evidence:

[13] The Respondent submitted a copy of the City of Calgary Development Permit DP2007-2006 for the property at 1302 and 1316 11 Avenue SW. It was pointed out the permit approved December 13, 2007 would no longer "be valid if development has not commenced by December 13, 2010". (R1, Pg. 9-10) A print of a search conducted on the City of Calgary data base showed the development permit was recorded as lapsed as of December 17, 2010 and a Development Site /Service Permit issued August 25, 2008 had been cancelled effective January 24, 2012 due to "no activity in over 3 years". (R1, Pg. 8)

[14] The Respondent presented the Board with a copy of the City of Calgary Land Use Bylaw -1P2007, specifically Division 5: Centre City Mixed Use District (CC-X). (R1, Pg. 11-21) The pertinent section is Purpose 1162 which stated, "The Centre City Mixed Use District: (a) is intended to provide for a mix of commercial, residential and a limited range of light industrial uses sites within the Centre City Area". (R1, Pg. 11)

[15] The Respondent stated when there is no development permit or building permit in place then the assessment for vacant land defaults to a commercial land rate.

[16] The Respondent submitted the decision for CARB 2621/2011-P which also addressed the issue of assessment class on parcels of land in the immediate vicinity of the subject property – 1400 10 Avenue SW and 1334 10 Avenue SW. The cited decision also dealt with a property where the development permit for a residential project had lapsed in late 2010. The Decision of the Board CARB 2621/2011-P confirmed the assessment class as the development permit had lapsed.

Findings of the Board:

[17] The Board in its deliberation looked closely at the evidence and cited decisions submitted by both parties.

[18] The Board found there had been a 2007 development permit in place up to December of 2010 when it lapsed due to the lack of activity on the site. Further, a 2008 development site service permit had been cancelled, also due to the lack of activity on the site. The Board notes in the time since the permits lapsed there has been no indication of a new application by the owner, which would indicate a continued interest in the development of the site. The Complainant submitted no evidence from the owner to show that there is a continued intent to develop.

[19] The Board found the zoning of CC-X under Land Use Bylaw allowed for a range of activities including both residential and non-residential. The Board agrees with the opinion the City of Calgary use of the Development Permits to indicate intended use is a logical process when zoning is not specific as to assessment class.

[20] The duty of the Assessment Business Unit is to establish the market value for a property

through mass appraisal techniques, taking into consider its zoning and development permits or building permits applicable to the site. In the case of the subject property when a development permit was in place there was a split assessment class applied to the valuation. The lapsing of the permit resulted in the property being reclassified as 100% commercial.

[21] In its review of the MGB 088/06 decision, the Board noted the statement, "the MGB concluded that there was a present intent and a substantial act to carry out the intent on the part of the Riverfront properties". (C1, Pg.39-40) These actions included the obtaining of financing and the acceptance of deposits on the residential units. Additionally, there was evidence of an active pursuit of a development permit for the site. In the case of the subject property, the Complainant's own evidence shows the "Status – On Hold" (C1, Pg. 25) and "Selling Status – Unknown". (C1, Pg. 28)

[22] The Board found in this situation that as of December 31, 2011 the lack of activity by the owner and the lapsing of the development permit in 2010 does not support the "intention" to develop the site for residential use.

[23] Based upon the evidence submitted and considered, the Board concludes that the 'non-residential' assessment class applied to the subject property is correct for the 2012 assessment year.

Board's Decision:

[24] The Board confirmed the assessment at \$4,760,000.00 and the assessment class as 100% non-residential.

DATED AT THE CITY OF CALGARY THIS 12 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
3. 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