

**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.

between:

***Tull Properties Ltd.,
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Zacharopoulos, PRESIDING OFFICER
H. Ang, MEMBER
R. Kodak, MEMBER***

[1] 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 2011 Assessment Roll as follows:

ROLL NUMBER: 094203304

LOCATION ADDRESS: 4200 46 AV SE

HEARING NUMBER: 63934

ASSESSMENT: \$6,680,000

[2] This complaint was heard by a Composite Assessment Review Board on July 20th, 2011 at the office of the Board located at 4th floor, 1212-31 Avenue NE, Calgary, Alberta, Boardroom 1.

[3] Appeared on behalf of the Complainant:

- *Mr. J. Smiley* *Altus Group Ltd.*

[4] Appeared on behalf of the Respondent:

- *Mr. K. Gardiner* *City of Calgary Assessment*

BOARD'S DECISION IN RESPECT OF PROCEDURAL OR JURISDICTIONAL MATTERS:

[5] At the onset of the hearing the Respondent advised the Board that the Complainant's disclosure was not in keeping with the **Matters Relating to Assessment Complaints Regulation 310/2009** (MRAC), Sec 8(2)(b)(i). In particular, it was noted that the subject property was not included within those represented by the Complainant's "Industrial Capitalization Rate Analysis". The Complainant agreed that this was in fact the case.

[6] The Board looked to MRAC Sec 9(2) in deciding that it would not hear any evidence from the Complainant that had not been disclosed as per MRAC Sec 8. The Board therefore did not consider the Complainant's "Industrial Capitalization Rate Analysis"; the document deemed to have not been properly disclosed.

PROPERTY DESCRIPTION:

[7] The subject property is an improved 3.46 acre parcel located near the intersection of 46th Avenue and 43rd Street SE, within the Valleyfield industrial area in SE Calgary. The assessment record shows the multi tenanted building was built circa 1999, has an assessed area of 52,364 sf and is valued through a rate of \$127/sf. The site coverage is 34.75%.

REGARDING BREVITY:

[8] In the interests 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.

MATTERS/ISSUES:

[9] The matter identified by the Complainant as the basis for this complaint is "an assessment amount". While the Assessment Review Board Complaint (complaint form) form also indicates "an assessment class" to be under question, the Complainant indicated at the time of the hearing that there was no objection to the classification of the subject property.

[10] The Complainant has raised the following issues for the Board's consideration:

1. **Is the Income Approach to value (IAV) the recommended valuation method for the subject property?**
2. **Does the Complainant's IAV calculation produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?**

COMPLAINANT'S REQUESTED VALUE:

[11] \$5,450,000 at the time of the hearing. The Complainant's brief (as per Doc C-1, pg 47) shows \$5,770,000. The complaint form also shows \$5,770,000.

BOARD'S DECISION IN RESPECT OF EACH MATTER OR ISSUE:

[12] In addition to the evidence the parties presented at the hearing the Board referenced the Municipal Government Act and associated Regulations in arriving at its decision. We found the following to be particularly applicable to the complaint before us:

- **Municipal Government Act** (MGA) Part 9 and Part 11.
- **Matters Relating to Assessment and Taxation Regulation 220/2004** (MRAT) Section 1; Part 1 and Part 5.1.
- **Matters Relating to Assessment Complaints Regulation 310/2009** (MRAC) Division 2 and Schedule 1.

[13] Jurisprudence has established that the onus of showing an assessment is incorrect rests with the Complainant. Evidence and argument was put before the Board by the Complainant in that regard; to show the assessment is incorrect and to provide an alternate market value as of July 1, 2010 (see line [10] above). The Board is to determine if (within the direction of the MGA and associated Regulations) it has been swayed to find the assessment is incorrect and if the assessment, being a market value determination as of July 1st 2010, should be revised.

[14] With regard to the individual issues identified above the Board's findings are as follows:

1. **Is the Income Approach to value (IAV) the recommended valuation method for the subject property?**

[15] The valuation standard applicable to the subject property is found under MRAT Sec. 6; that being market value. The MGA and associated Regulations do not identify specific valuation method(s) to be utilized in the determination of market value for the subject property.

[16] The Board is therefore prepared to consider evidence pertaining to the determination of the market value of the subject property as of July 1, 2010 with no prejudice for any valuation method employed by the parties.

2. **Does the Complainant's IAV calculation produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?**

[17] The Complainant has provided a valuation as per the IAV based on inputs progressed through the attached analysis (starting Doc. C-1, pg 16). The Complainant's IAV calculation

(Doc. C-1, pg 17) shows the following inputs:

- Rent: \$9.00/square foot (sf); reduced to \$8.50/sf at the time of the hearing
- Vacancy: 5%
- Capitalization rate (cap rate): 7.75%

[18] The Board finds the Complainant's IAV assumptions are not effectively supported. The Complainant utilizes a common rent rate (be that \$9.00 or \$8.50/sf) for the entire building area yet his evidence (see Doc. C-1, pgs 19 & 20) is based on (overlapping) bay size criteria that would segregate the building areas into varying rent rates. This appears to have been the Complainant's intention as per Doc. C-1, pg 1, point #4.

[19] The Board finds the requested assessment revisions are not supported by the Complainant's value calculation based on "Actual Lease Rate" (see Doc. C-1, pg 17).

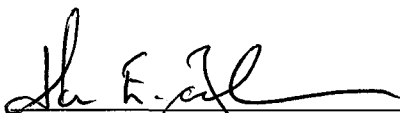
[20] In light of the non-disclosure issue addressed under [5] and [6] above, the Board found no support before us for the Complainant's cap rate.

[21] Consequently, the Board finds the Complainant's IAV calculation does not produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010.

BOARD'S DECISION:

[22] The assessment is confirmed at \$6,680,000.

DATED AT THE CITY OF CALGARY THIS 19 DAY OF August 2011.



I. Zacharopoulos
Presiding Officer

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

NO.	ITEM
1. Doc. C-1	Complainant's Submission
2. Doc. C-2	Summary of Testimonial Evidence
3. Doc. C-3	Complainant's Rebuttal
4. Doc. R-1	Respondent's Submission

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.*