

**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:

Clifford Eisenberg and Stanley Eisenberg, COMPLAINANTS (as represented by Altus Group Limited)

and

The City of Calgary, RESPONDENT

before:

J. Dawson, PRESIDING OFFICER

R. Kodak, MEMBER

J. Mathias, MEMBER

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:	068118009
LOCATION ADDRESS:	438 11 Ave SE
HEARING NUMBER:	63367
ASSESSMENT:	\$2,510,000

This complaint was heard on 17th day of August, 2011 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *D. Mewha* *Agent, Altus Group Limited*

Appeared on behalf of the Respondent:

- *D. Satoor* Assessor, The City of Calgary

Board's Decision in Respect of Procedural or Jurisdictional Matters:

No objections on procedure or jurisdiction were raised.

Property Description:

The subject property is located south of downtown in an area referred to as the Beltline District with 13,015 square feet of assessable land in the BL1 zone. The subject has one building with an assessable building area of 38,420 square feet. The subject was built in 1910 and is of a D quality predominantly used for warehouse space. There are no assessable parking stalls on the subject site. The Income Approach was utilized by the Respondent calculating a Net Operating Income (NOI) of \$194,724 using \$8.00 for above grade office warehouse rental rate, \$3.00 for below grade office warehouse rental rate, a 7.75% capitalization rate and 9.5% vacancy resulting in the current truncated assessment of \$2,510,000.

Issues:

The Complainant identified two matters in section 4 of the complaint form being; a) item number 3, an assessment, and b) item number 4, an assessment class. Attached to the complaint form was additional information for section 5, reason(s) for complaint, wherein the Complainant altered their matters to a single matter being an assessment.

These are the relevant reasons for the complaint provided by the Complainant in their Document C1 (page 9);

- i. The subject assessment is in excess of its market value.
- ii. The subject assessment is unfair and inequitable with similar properties.
- iii. The subject property's highest and best use is as land value.
- iv. The assessed rental rate is in excess of market value and inequitable resulting in an incorrect conclusion of potential income.
- v. The assessed capitalization rate is too low and inequitable and does not reflect the risk associated with the property

Complainant's Requested Value: \$1,880,000 (complaint form and disclosure document using land value only \$145 per square foot)

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

Is the assessment of the subject property in excess of its market? And is the assessment of the subject property unfair and inequitable compared with similar properties? And is the assessed rental rate in excess of market value and inequitable resulting in an incorrect conclusion of potential income? And is the assessed capitalization rate too low and inequitable and not reflecting the risk associated with the property?

The Board finds the assessment of the subject property is in excess of its market value for assessment purposes and unfair and inequitable considering the assessments of comparable properties. The Board also finds the assessed rental rate is in excess of market value and inequitable resulting in an incorrect conclusion of potential income.

The Complainant argued the assessment was not reasonable as the use as warehouse cannot achieve the rates the Respondent has assessed. The Respondent has assessed the space using two rental rates; 1) above grade, and 2) below grade. The Respondent argued that these are the two rates used by the assessment department and there is not a third rate used for at grade levels. The Complainant argued the second, third and fourth floors should be at the same rate as below grade pointing out the utility is the same. The Complainant argued the assessment department provides a rate for below grade lower than above grade in recognition of the loss in utility due to; lack of loading docks, and the inability to navigate large pallets and forklifts in elevator. The Respondent argued the lack of windows and reduced ceiling heights were also factors. The Complainant rebutted that warehouse storage has no advantage with windows and the height restriction also occurs on the second, third and fourth floors. The Complainant further argued that forklifts cannot be accommodated on the old wood floors of this building rendering the utility of the space the same as the basement space.

The Complainant pointed out that the main reason the Respondent does not have a third value for at grade space to differentiate between above grade space was because no warehouse space in use today would be anything but at grade and all the comparables they were able to find were at grade with no below or above grade space.

The Board is satisfied that warehouse space above the main floor is essentially of the same utility as the below grade space and supports a \$3.00 rental rate valuation for the second, third and fourth floors as has been assessed for the below grade space. Changing the warehouse rental rate alone on the 23,052 square feet of space above the main floor would equate to a new assessment value below vacant land and found no need to contemplate the capitalization rate applied to the subject property.

Is the subject property's highest and best use as land value?

The Board determined a value of \$152.25 per square foot for the 13,015 square feet land area of the subject property.

Neither the Complainant nor the Respondent provided a highest and best use study for the subject property however the Board supports the argument that the value attributed by utilizing the Income Approach should not be less than the underlying baseline value calculated using the Direct Sales Comparison Approach of vacant land less costs to clear site.

The Complainant provided, in Document C1 (pages 56 and 57), the City of Calgary's land value

information; 1) 2011 Beltline Non Residential Land Rates, and 2) 2011 Beltline Influence Chart. The Board is satisfied that the correct land value for the subject property located in the BL1 zone is \$145 per square foot however finds the subject is on a corner and requires a 5% positive adjustment resulting in a value of \$152.25 per square foot. The Board determined there are no other influences on the subject property.

Board's Decision:

After considering all the evidence and argument before the Board, the complaint is accepted, and the assessment is reduced to \$1,980,000.

DATED AT THE CITY OF CALGARY THIS 16 DAY OF SEPTEMBER 2011.


J. Dawson
Presiding Officer

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

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure
3. C2	Complainant Rebuttal 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.*

Municipal Government Board use only: Decision Identifier Codes				
Appeal Type	Property Type	Property Sub-Type	Issue	Sub-Issue
CARB	Warehouse	Warehouse Multi-Tenant	Cost Approach	Land Value
			Income Approach	Net Market Rate

