

**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:

***1397130 Alberta Ltd.
(as represented by Altus Group Ltd.), COMPLAINANT***

and

The City Of Calgary, RESPONDENT

before:

***I. Zacharopoulos, PRESIDING OFFICER
J. Mathias, MEMBER
J. Rankin, 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:	092037803
LOCATION ADDRESS:	4949 BARLOW TR SE
HEARING NUMBER:	64183
ASSESSMENT:	\$23,860,000

[2] This complaint was heard by a Composite Assessment Review Board on September 6th, 2011 at the office of the Board located at 4th floor, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

[3] Appeared on behalf of the Complainant:

- *Mr. J. Weber* *Altus Group Ltd.*
 - *Mr. J. Maslin* *Altus Group Ltd.*
- Also in attendance and observing was Mr. M. Cheon, owner of the subject property.*

[4] Appeared on behalf of the Respondent:

- *Mr. R. Farkas* *City of Calgary Assessment*

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

[5] There were no procedural or jurisdictional matters before the Board.

PROPERTY DESCRIPTION:

[6] The subject property is an improved parcel located near the intersection of 49th Avenue and Barlow Trail SE, within the Valleyfield industrial area in SE Calgary. The property is identified as the Road King Truck Stop and the record shows it is zoned C-COR3 f1.0h12.

[7] The assessment summary shows the subject buildings are assessed through the Cost Approach to Value through the Marshall & Swift valuation calculator while the 16.057 acre land parcel is valued at a base rate of \$65/square foot (sf) for the first 20,000sf and a residual rate of \$28/sf for the remaining land. An adjustment of +5% is made to the land value for corner influence.

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 form (complaint 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 Board finds the Complainant has presented the following issues for deliberation:

1. **Does the assessment properly reflect the characteristics of the subject property?**
2. **Does the Complainant's market analysis produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?**
3. **Does the Complainant's equity evidence produce an appropriate market value**

- indicator for assessment purposes for the subject property as of July 1, 2010?
4. **Has the Complainant established that the 2008 sale of the subject property is an appropriate basis for the determination of market value for assessment purposes as of July 1, 2010?**

COMPLAINANT'S REQUESTED VALUE:

[11] \$9,175,000 as per Doc C-1, pg 2. The Complainant's requested valuation is based on the 2008 sale of the subject property.

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] Both parties also placed a number of Assessment Review Board and Municipal Government Board decisions before this Board in support of their position. While the Board has the utmost respect for the decisions rendered by these tribunals, it is also recognized that these decisions were made in respect of issues and evidence that may be dissimilar to that before this Board. This Board will therefore not give much weight to these decisions unless the issues and evidence are shown to be timely, relevant and materially identical to the subject complaint.

[14] Jurisprudence has established 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 [12] 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.

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

1. **Does the assessment properly address the characteristics of the subject property?**

[16] The maps and photos provided by both parties do not illustrate the subject property enjoys a corner location. The Respondent accepted that the +5% adjustment for corner location has been applied in error and the assessment should be reduced to \$22,850,000 accordingly.

[17] The Complainant has provided evidence of numerous caveats registered on the subject title certificate including 4 utility right of way agreements (see C-2, pg 315) including high tower power transmission wires along the property's east boundary.

[18] The Complainant provided a review of *Commercial Districts* starting C-1, pg 132 in order to show the subject land use is closely aligned with Industrial designations and should therefore

be assessed likewise. Furthermore, the Complainant points to the land use designation of the subject property where floor area ratio is restricted to 1.0 and the building height to 12 meters and proposes this best reflects industrial zoning guidelines, in particular I-C as per R-1, pg 58. A summary of industrial sales reportedly analyzed by the City is provided under C-1, pg 126, indicating a calculated median land rate of \$802,490/acre.

[19] Under C-1, pg 147 through 150 the Complainant provides influence allowances and application parameters for same as prepared by the City. It is the Complainant's position that the subject property displays a number of possible adjustments (e.g. land use restriction, transmission/power lines).

[20] The Respondent has not made any influence adjustments to the subject assessment beyond the aforementioned corner influence adjustment. It was the Respondent's position that notwithstanding the provided criteria the value of the subject property was not affected by any other influences. The Respondent provides the land use guidelines for C-COR3, I-B and I-C starting R-1, pg 35 in an effort to show development options vary between the zones.

[21] The Board finds the Complainant has established characteristics unique to the subject property that apparently have been subjectively dismissed by the Respondent. The Board is not swayed that valuation in accordance with industrial guidelines would rectify this.

[22] The Board concludes the assessment does not properly address the characteristics of the subject property.

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

[23] The Respondent provided under R-1, pg 30 an analysis of 8 land sales (all zoned C-COR but with varying designations) in support of the land rate utilized in the subject assessment. The Respondent's market analysis is focused on zoning and – in light of limited sales activity – concludes that all C-COR zoned properties throughout Calgary are to be assessed uniformly as per [7] above.

[24] The Complainant addressed the Respondent's sales through rebuttal summarized under C-2, pg 4, illustrating factors to distinguish each transaction and question the soundness of grouping these 8 properties to reach a standardized value conclusion. As per [18] above the Complainant proposes an industrial value basis would be most appropriate for the subject property.

[25] The Respondent did not refute the Complainant's rebuttal. The Board notes substantial locational and zoning variances (especially with regard to location, allowed floor area ratios and building heights) between the subject and the Respondent's market references.

[26] The Complainant also referenced 3 sales – all developed properties along 32 Avenue NE and identically zoned to the subject. The Complainant's analysis as provided under C-1, pg 45 assumes varying land residual determinations in an effort to address the residual land rate of \$28/sf applied to land beyond 20,000sf as per [7] above. This is purportedly supported by the realtor's opinion for land values along 32nd Avenue NE.

[27] Notwithstanding the perceived weakness in the Respondent's analysis, the Board finds

the Complainant's approach to be unconvincing. The Board notes the Complainant uses the Marshall & Swift valuation calculator to arrive at a land residual for 3305 32 St NE and then appears to reflect that finding (not site specific calculations) to adjust the other 2 sales. Furthermore, the sale at 2701 32 AV NE is reported to be a foreclosure. In light of these irregularities the Board does not find this to be a convincing portrayal of the market reality.

3. Does the Complainant's equity evidence produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010?

[28] The Complainant referenced 2 purported comparable properties under C-1, pg 41 and pg 44. The intent is to show two similarly utilized properties (both truck stops) are assessed much lower than the subject property.

[29] The Board finds there are insufficient details provided to show that these properties are comparable to the subject. Aside from locational differences, the Board looks to zoning, land size and building size variances between the 3 properties which have not been addressed by the Complainant.

[30] The Board finds the Complainant's equity evidence does not produce an appropriate market value indicator for assessment purposes for the subject property as of July 1, 2010.

4. Has the Complainant established that the 2008 sale of the subject property is an appropriate basis for the determination of market value for assessment purposes as of July 1, 2010?

[31] The Complainant brings forward the 2008 sale of the subject property for \$9,175,000 (report shown under C-1, pg 14); *Offer to Purchase* under C-1, pg 16; *Land Title Certificate* under C-2, pg 315). In support of the subject sale the Complainant looks to **697604 Alberta Ltd. V. Calgary (City of), 2005 ABQB 512** whereby the Court (upon quoting from **Regional Assessment Commissioner, Region 11 v. Nesse Holdings Ltd. Et al.** under page 5 of 7 of the decision and then referencing **Mountain View (County) v. Alberta (Municipal Government Board)** under page 6 of 7) looks to the sale of the subject property as reflective of market value as defined by the **MGA**.

[32] The Respondent notes the Offer to Purchase was signed October 27, 2007 and concludes the transaction is dated and not an appropriate reference for the subject assessment which has a valuation date of July 1, 2010. The Respondent did not provide an analysis of this sale.

[33] The Board finds the pertinent date for market analysis purposes relied upon by the Respondent is the registration date. In that the Land Title Certificate shows a registration date of August 12, 2008 the Board finds the sale of the subject property is within the relevant timeframe for the subject assessment.

[34] In further support the Complainant provided 2 appraisals completed by Altus Group Ltd.; one of the subject property dated June 9, 2006 under C-1, pg 156 and one of a nearby property dated October 15, 2009 under C-1, pg 75. The intent of the appraisal reports was to support the Complainant's position the industrial land sales offer the best value indication for the subject lands.

[35] The Board finds the appraisal of the subject property to be a dated document, with no evidence provided to show it is applicable for the determination at hand. The other appraisal was not found to be representative of the subject property, or the Board's findings as expressed under [21] above. The Board has expressed its views regarding the viability of industrial land values as proxies for the subject property also under [21] above. The Board did not give any weight to the 2 appraisals.

[36] The Board finds no evidence before it to dismiss the sale of the subject property. In that the Board has found the property characteristics of the subject property are not properly reflected within the assessment and the cumulative market and equity data is found to be unconvincing, the Board looks to the sale of the subject property.

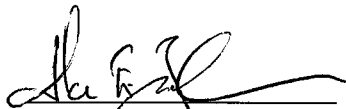
[37] The Board notes the Respondent's land sale analysis utilizes time adjustments. In that there is no market evidence before it to neither support such adjustments, or to associate time adjustments with improved property sales, the Board finds no rationale for any adjustment to the sale price of this developed property.

[38] The Board finds the Complainant established that the 2008 sale of the subject property is an appropriate basis for the determination of market value for assessment purposes as of July 1, 2010.

BOARD'S DECISION:

[39] The assessment is reduced to \$9,170,000 (rounded).

DATED AT THE CITY OF CALGARY THIS 17 DAY OF OCTOBER 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 & Addenda
2. Doc. C-2	Complainant's Rebuttal
3. Doc. R-1	Respondent's 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.*